United States Court of Appeals

for the Second Circuit

APPENDIX

74-1969-2341-2366

United States Court of Appeals

FOR THE SECOND CIRCUIT

IIT, an International Investment Trust, and GEORGES BADEN, JACQUES DELVAUX and ERNEST LECUIT, as Liquidators for IIT, an International Investment Trust,

Plaintiffs-Appellees-Cross-Appellants,

—against—

VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants-Appellants-Cross-Appellees,

and

WALTER BLACKMAN,

and

ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LeBLANC and STANLEY GRAZE,

Defendants.

APPENDIX

(Volume II—pages 479A to 1000A)

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JAN 13 1975
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IIT, et. al.,

Plaintiffs,

-against-

74 Civ. 2504

VENCAP, LTD., et. al.,

Defendants.

June 18, 1974
10:30 a.m.

- - -

MR. ANDERSON: Your Honor, I have a few composite exhibits, schedules made up from other exhibits. I have an exhibit on this to reflect this chart that was used during Mr. Donovan's testimony.

THE COURT: Mr. Anderson, just to show that I am paying attention, I multiplied 352,823 by 15 percent, and I came out with a different figure. I came out with 52,923, which I think is not very consequential. You can do what you want with that.

MR. ANDERSON: I don't think that changes the substance. That would change the split in profit according to my calculations by maybe 60, 70 dollars.

THE COURT: By exactly $100. All right.

MR. ANDERSON: I gave a copy of this to Mr. Oram.

THE COURT: My suggestion is that perhaps you would like to make the figures right.

MR. ANDERSON: Since we started out with Mr. Oram's --

THE COURT: It's worked back up.

MR. ANDERSON: And we will do the chart right and find out what this number is.

THE COURT: My mathematics may be wrong, but when I multiplied 15 percent by that number, I come up with my figure but I hardly think we need to pause on this.

MR. ANDERSON: I will redo that.

MR. ORAM: I think your Honor, that the witness Mr. Donovan initialed the original computations that he made and that is already an exhibit. I believe that to be the fact.

THE COURT: I don't think we ought to discuss this anymore. I shouldn't have raised it.

MR. ANDERSON: I ask there be marked a composite of the Vencap monthly securities transaction which is made up from Exhibits 14-19, and I gave Mr. Oram a copy of that only this morning so I ask that it be subject to verification on his part.

THE COURT: I take it though, it is a composite of information already given him?

MR. ANDERSON: That is correct.

MR. ORAM: To the extent it is in fact a summary of documents already in evidence, I have no objection to it.

I do note, however, the last two columns on the right, and I don't know whether I have an objection to it because I am not sure I understand them. Perhaps Mr. Anderson can explain them to me.

Really, in fairness, what I am directing myself to is that a calculation made by your or the information contained on the right, does that appear in an exhibit?

MR. ANDERSON: I am sorry. The last two columns on the right were prepared from the information in the first three columns. The information in the first three columns was taken from Exhibit 14-19.

MR. ORAM: Subject to my examination of those exhibits and these computations, I have no objection.

THE COURT: I don't see how you get -- I can see how you get the next to the last, the first of the last two columns, but how do you get the last column from Exhibit 14-19?

MR. ANDERSON: You get the last column from the next to the last column.

THE COURT: Let's take the second figure whichI think is Lincoln American. How do you get from 353,000-odd dollars to 378,000-odd dollars?

MR. ANDERSON: Your Honor, in the month of September, they invested a total of $24,412.

Would it help if you had another copy?

MR. ORAM: Not unless you need it.

MR. ANDERSON: The amount invested at the end of the month of October was 24 --

THE COURT: I understand. The 378 doesn't relate to Lincoln American.

MR. ANDERSON: It's at the end of the month. Ther were 20 months.

THE COURT: So if you have Exhibit 14-19 and you understand how to work the mathematics you can come from 14-19 to this piece of paper?

MR. ANDERSON: That is correct, your Hnor. When you add all those 20 months and divide them by 20, you get an average outstanding investment of $1,379,158.32 which appears in the lower righthand corner.

MR. ORAM: Subject to examination of 14-19, I have no objection.

(Plaintiff's Exhibit 30, received in evidence.)

MR. ANDERSON: Your Honor, we have a composite list of expenditures both checks and bank transfers from-- I am sorry, checks drawn on Vencap's bank accounts, Intercapital's bank accounts. These lists were prepared from exhibits that are already in evidence and as indicated on the front of the exhibit. I wouldn't enumerate all of those.

MR. ORAM: If these are merely summary of documents already received, I have no objection.

xxxx (Plaintiff's Exhibit 31, received in evidence.)

MR. ANDERSON: Finally, your HOnor, I have an accounting work sheet that was prepared from the checks reflected in Exhibit 31 for identification which breaks the various checks down by categories such as advances, expenses, salaries, professional fees, United Airlines, etc. So, this work sheet was prepared from the same sources used in the preparation of Exhibit 31. That too we just got this morning, we just finishedthis morning.

MR. ORAM: No objection on the same basis that they are merely summaries.

(Plaintiff's Exhibit 32, received in evidence.)

MR. ANDERSON: We have another composite exhibit, your Honor, a summary of the Vencap securities transactions on which we discovered a typographical error this morning and that is being corrected. I did give Mr. Oram a draft of that last night and I would like to mark that.

THE COURT: "T.E." Does that mean travel and expenses?

MR. ANDERSON: Yes, your Honor, as shown on the ledger sheets.

THE COURT: How do I know it means travel and

expenses, because you tell me?

MR. ANDERSON: I think the underlying -- the underlying records say "Trav. and Expenses."

THE COURT: What about "T&E" that is what I see here?

MR. ANDERSON: I am sorry, your Honor. The records do say, the underlying records supporting that do say T&E. I think it is a fair inference that T&E means travel and expenses.

THE COURT: I think it is a fair inference but I would like to know what it means. You are telling me that the underlying records make it clear?

MR. ANDERSON: No, I am not representing that to your HOnor.

THE COURT: I would suppose this is something tht can be developed very quickly and you can talk to counsel and let me know for sure whether T&E means what we think it means. I don't know that you have to do that right now, Mr. Anderson, but I would like to be assured that T&E means travel and expenses.

MR. ANDERSON: I am sorry, travel and entertainment.

THE COURT: I can think of other things it might mean, so I would like to be sure it stands for travel and

entertainment.

As I go down the page, and I am looking at 31, the item that has 27,000-odd dollars and on the righthand column it says to purchase 5,000 URSY.

How do I find out what these abbreviations mean? I am not concerned at the moment what URSY means, but I am concerned about the possibility as I go through this that I will see other abbreviations and I wouldn't know what they mean.

I see, for example, on page 5 about halfway down the page, it has 10 percent on option 4, then it says "illegible." I don't know whether these are things that are important for me or not. I see just above that, still on page 5, it says "Five items, advanced RCP." I haven't any idea what RCP stands for. Maybe I don't need to know.

MR. ANDERSON: Your Honor, RCP I can tell you is shown in the records and that is Richard C. Pistell.

THE COURT: All right.

I am not going to spend the time right now to go through this and try to decipher all the abbreviations, but if I find an abbreviation which I don't understand, what do I do?

MR. ANDERSON: Your Honor, I think the comparison of the checks and the accounting work sheets between the two

fairly well make apparent what these abbreviations are. Where the document was illegible, at least illegible to us, I think that there is no way that I can enlighten you unless the defendant's counsel --

THE COURT: I can assure you of one thing, Mr. Anderson, neither you nor my staff are going to go through the process of comparing all these checks. We are going to have to look to you for help if we run into problems .

MR. ANDERSON: That is the reason for preparing these summaries.

THE COURT: That is what I understood.

Go ahead.

Do we have everything from you?

MR. ANDERSON: Yes.

Subject to the other schedule.

THE COURT: Which you discovered has a typographical error and you will offer that later today.

MR. ANDERSON: That is correct.

MR. ORAM: Your Honor, the plaintiff having rested, I would like to move this Court that the temporary restraining order entered on June 10th be lifted and that the plaintiff's application for a preliminary injunction be denied. I think in our brief, your Honor, we submitted well established rules that there are three elements to the

issuance of a preliminary injunction and a flaw in the evidence as to which anyone of those elements is fatal to the plaintiff's case.

As we understand the plaintiffs' case, it is that there was a conspiracy between Mr. Pistell and certain other named defendants, the purpose of which was to obtain for Vencap $3,000,000 and that thereafter that $3,000,000 or some portion of it was appropriated by Mr. Pistell for his own use.

We feel, your Honor, that the presence in this case of Mr. Vesco, Mr. Meissner, Mr. Leblanc is merely window dressing. Theplaintiff has shown no interest in them and he has adduced no evidence whatsoever with respect to any conspiracy between Mr. Pistell and any of those name defendants. On the contrary, the testimony shows, the evidence shows that Mr. Pistell met Mr. Graze in London. Mr. Graze asked Mr. Pistell for his aid in determining what kind of investments he should get into. Mr. Pistell advised him that if it were he, he would dispose of some of those assets that Mr. Graze presently had and invest them in the yen and the mark.

About a month later, Mr. Pistell proved to be correct. There was a devaluation, the first of two.

Subsequently, when Mr. Graze learned from Mr.

rklt 10

Pistell of Mr. Pistell's plan to form Vencap, Mr. Graze obviously impressed with Mr. Pistell's grasp of international money markets decided to invest in Vencap.

I point out, your Honor, that at no time is there any evidence that Mr. Pistell knew then, or knows today, the source of the funds which were invested in Vencap. We are dealing with an investment by Luxembourg Corporation in a Bahamian corporation. Mr. Pistell was not under any duty to inquire as to the source of these funds. All he had to know was, that the investor had the power to make the investment and that the agreement that he reached was in accordance, was binding and in accordance with his terms.

Your Honor, I point out that in every conspiracy case there always appears to be an element on the part of the defendant of an attempting to hid some portion of the transactions, to keep to himself the operative events that the plaintiff alleges, and I remind your Honor, that Mr. Pistell has testified on three separate occasions.

He has volunteerd to any legitimate inquiry all of the documents that he has. He has made himself available. He has attempted to hide nothing. That to me, your Honor, does not sound as though a conspiracy were in fact present.

rklt 11

If you review the testimony adduced by Mr. Anderson on his case, I repeat you will find not one shread that links Mr. Pistell, Vencap, Intervent, Intercapital, Mr. Taylor, Mr. Murphy or my law firm with any conspiracy to induce or defraud IIT into making any investment in Vencap.

Secondly, if Mr. Anderson is to succeed, the second part of his allegation is that Mr. Pistell once having received this money, diverted substantial portions to his own use.

The evidence does not support that conclusion either, your Honr. First, we have the loan of $590,000.

The evidence will show that IIT knew of Mr. Pistell's tax problems in advance of making the investment. They knew that a loan was considered. The loan we made was fully collateralized, bore interest at 9½%. The interest has been paid.

Then we come to the question of Mr. Pistell's salary. Even the plaintiffs' own expert conceded that the salary of $60,000 was appropriate for a man of Mr. Pistell's experience in dealing with money to be invested in risk capital situations.

We come to the question of the $150,000 house.

The evidence shows that Mr. Pistell in agreeing to move to the Bahamas, to run Vencap, gave up an apartment

in which he had personally invested $200,000 in improvements. He gave up a job of $50,000 a year as chairman of Lincoln American. He gave up stock options. He gave up the fringe benefits available to him. He relocated to the Bahamas.

We come to the question of expenses. The evidence shows that the accountants for the company have determined that each of the expenses complained of by the plaintiff was a legitimate expense for a legitimate business purpose. There is no evidence to the contrary.

THE COURT: What do I do, Mr. Oram with the argument that IIT was formed for certain purposes which were set forth in written statements which as I recall were not consistent with the notion that he then put some of IIT's money into Mr. Pistell's concededly speculative ventures?

I am not suggesting they are not going to be productive. I am just asking you what do I do with the notion?

MR. ORAM: From our side of the table, your Honor, I think the fact was that IIT could not invest in the United States, could not deal in securities.

THE COURT: No, but they already had investors they already had stockholders in the United States.

MR. ORAM: Your Honor, that is a point and as far as I read the record of the proceedings in this hearing,

there is no proof that they do.

THE COURT: I am not sure that is in the record. Is that correct, Mr. Anderson, is it in the record?

MR. ANDERSON: Your Honor --

THE COURT: I have seen it argued in the briefs before me in this case.

MR. ANDERSON: We have those stockholders lists that are in evidence. I think the question of what weight you give to that, you reserved.

THE COURT: Yes.

MR. ORAM: Your words were, if Mr. Anderson wants to show there were United States stockholders, he will have to do more than he has done.

THE COURT: Why is that?

MR. ORAM: I quote you, your Honor. Our observation at the conclusion of the testimony of the Canadian computer expert, whoever he was, when there were substantial objections as to whether those exhibits showed at the relevant times in this proceeding --

THE COURT: You are talking about the evidentiary value?

MR. ORAM: Thatis correct.

THE COURT: You are entitled to talk about their

evidentiary value, obviously. Let's assume for the moment, Mr. Oram, there are U.S. investors in IIT. What do you do w with that situation?

MR. ORAM: You have to deal with it, I suppose, your Honor, from the point of view of jurisdiction.

THE COURT: That is what I am getting at.

MR. ORAM: The allegations or the jurisdictional basis as I understand it from reading Mr. Anderson's complaint uses 10B and 10B5, Section 17, and alleges under those sections violations of the Securities Acts and seeks to tie them from offshore transaction by some impact on U.S. citizens.

I take it that is what his allegation is. There are two securities transactions, your Honor, and I propose to brief the subject.

There are two securities transactions. The first is the sale by the Bahamian company in the Bahamas to the Luxembourg company. I doubt that even Mr. Anderson can push or twist 10B or 10b.5 or Section 17 far enough to cover that transaction.

The other transaction, the other securities transaction, is the sale of the so-called blue chip securities by IIT in part for the purpose of funding Vencap.

The only connection is the so-called three-page memorandum.

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THE COURT: When did Mr. Pistell move to the Bahamas?

MR. ORAM: The fal of 1972, your Honor.

THE COURT: Where did he live before he moved to the Bahamas?

MR. PISTELL: 817 Fifth Avenue, sir, which was an apartment that my wife and I were fixing up and going co-op and we walked out and left all the improvements.

THE COURT: Mr. Anderson, I didn't mean to get you into this, but if you will permit me.

I take it, Mr. Pistell, that is the apartment we have talked about on which you spent $200,000?

MR. PISTELL: That is correct, your Honor. Over that, as a matter of fact.

MR. ORAM: Since we are into this jurisdictional question, your Honor --

THE COURT: I am sorry I may have distracted you. I thought you were getting into it.

MR. ORAM: I think it is perfectly appropriate to address myself to it right now. I see we are now at the second securities transaction which as I understand it is the sale of certain blue chip securities heretofore undefined by IIT for the purpose in part of funding Vencap.

There is no evidence at all that Mr. Pistell

solicited or conspired with IIT to induct that sale, or that he made any representations by the use --

THE COURT: Now we are getting to, Mr. Oram, what it seems to me is the heart of this. I am concerned about the evidence that Mr. Anderson has introduced which suggests, at least to me, that there was a possiblity, there is a possibility, that the arrangement between IIT and Vencap was made because of the possibility, as Mr. Anderson alleges that this was a way of putting aside a part of the IIT money into the hands of a friend.

I can't ignore the evidence that Mr. Anderson has presented. So when you say there is no evidence, I just wanted you to know that my view is, there is some evidence. I don't know how weighty it is, I don't know whether it is weighty enough to be credible, but it seems to me there is some evidence that the relationship between IIT and Vencap under all the circumstances is subject to be scrutinized.

Secondly, on the jurisdictional point, just to finish my thinking, my expression of my thinking, it seems to me it is conceivable that there may be jurisdiction here. I am not finding that now, but it is conceivable that there may be jurisdiction here because there are investors in IIT who are United States citizens. That is conceded, I take it even though there may be some dispute about the tables

that Mr. Anderson has introduced, or if it is not conceded, I would suppose that it would not be unrealistic to assume that he could establish in due course those tables, are at least in part accurate.

Secondly, it seems to me that there is at least an argument, also, this is a little bit more complicated, but I think the argument is sound. I am not passing judgment whether the argument is right. I am just saying it is a sound argument and there are sound arguments I am sure on the other side that that it is possible that the relationship between IIT and Vencap may ultimately have had an adverse effect in impact if you follow the chain back on the stockholders of ICC, the Vesco company.

I toss these thought off, Mr. Oram, just to let you know what I am thinking about.

MR. ORAM: I appreciate those questions concern you, your Honor, and I think the only way to deal with them in a succinct and helpful way is for me to probably brief them for you which I would propose to do.

THE COURT: Which I would appreciate very much.

MR. ORAM: I think, your Honor, that is an ultimate issue-- it certainly is a threshhold question. but it is an issue for trial and I think what we are dealing with here and what I ask the Court to focus on, we are dealing with a request for an extraordinary remedy. A remedy of an

injunction to stop the ordinary business of Vencap for the appointment of a receiver.

THE COURT: As I indicated at the end of the day yesterday, I think I ought to be, and I am reluctant to grant that relief unless I am convinced it is absolutely essential.

I think we might take a short break at this point.

I wonder, Mr. Oram, what is your program? You tell me you want to brief these matters. I have indicated my thinking only because I want to stimulate your thinking, not becuase I have made up my mind on any of these points.

MR. ORAM: Our program, your Honor--

THE COURT: Do you want to spend some time briefing these questions or do you want to go ahead with your case?

MR. ORAM: I would like to go ahead. I am going to prepare to call Mr. Taylor, I have advised Mr. Anderson ofthat. I propose to call Mr Murphy and I propose to call Mr. Pistell. I think we should put them on the stand, let them tell their story and be subject to cross examination.

THE COURT: You do, of course, what you have to do, but it seems to me I would be interested in hearing from them.

How much time do you think we are going to use?

MR. ORAM: I would not think more than an hour

with Mr. Taylor.

THE COURT: Do you think we can do it all today?

MR. ORAM: I would make every effort on our part. I am sure the cross examination is speculative at this point.

THE COURT: I don't care whether it takes today or tomorrow. I just want to have an idea for my own scheduling purposes.

MR. ORAM: I think it will take at least today.

THE COURT: So we ought to plan on going into tomorrow?

MR. ORAM: I think so, your Honor.

THE COURT: Can we take five minutes?

(Recess taken.)

MR. ORAM: Your Honor, if I may just before I call Mr. Taylor, I have on or two other remarks that I would like to make.

Your Honor, momentarily to the jurisdictional issue. I think it is clear where we have an alien plaintiff and an alien defendant, we have no diversity jurisdiction and accordingly, unless the jurisdiction is sustained by the allegation of jurisdiction of the securities laws, the allegations of 302 of the bylaws, common law allegations will fall.

There are two other elements --

THE COURT: On that problem, the reason I asked about Mr. Pistell's residence, it may bear on that question.

MR. ORAM: As I say, your Honor, we will deal with this at some length in our brief.

THE COURT: He was a resident of New York up to some time in '72.

MR. ORAM: The other two elements necessary for plaintiff to show that they are entitled to be entitled to relief is irreparable damage to that plaintiff and a comparable damage to the defendant if in fact a relief is granted.

What the defendant is seeking here is money. It is clear if the relief is granted, substantial business opportunities of Vencap, Mr. Pistell's personal business reputation will all be destroyed. Unless the plaintiff is able to show all three items, there is a likelikhood of success that he will be irreparably damaged or that his damage outweighs the damage to the defendant. He is not entitled to this relief and I think, your Honor, even if you assumed jurisdiction before deciding, I think you would have to come to the conclusion that the plaintiff has made no such showing in this case.

THE COURT: What bothers me about that, Mr. Oram, I think it is also the rule in this Circuit that on a motion for a preliminary injunction, if the movant can show there

are substantial questions and that what you put as your third element, and that the position of those questions will not be prejudicial.

Disposition of those questions will not be prejudicial pending substantiation of the substantial questions, in those events the preliminary injunction is not warranted.

In other words, it seems to me you are stating the case a little too strongly for what I understand to be the rule in the Second Circuit.

On the other hand, I am perfectly aware, as I have indicated, that the remedy of a receiver is extraordinary and should be granted only in special circumstances.

All right.

MR. ORAM: Do you wish to reply or should I proceed?

THE COURT: I think the record ought to show, Mr. Oram, that as to the motions that you made, I am reserving decision.

MR. ORAM: Defendants will call David Taylor.

D A V I D T A Y L O R, called as a witness on behalf of the defendnats, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ORAM:

Q Mr. Taylor, what is your residence address, please?

A 232 East 53rd Street in New York.

Q What is your occupation?

A I am an attorney.

Q To shorten this, you are the David Taylor named in the complaint?

A That is correct.

Q And you are a partner in the firm of Havens, Wandless, Stitt & Tighe?

A Yes, I am.

Q Mr. Taylor, have you since about September of 1972 been the attorney in our firm, Havens, Wandless, Stitt & Tighe, principally charged with the affairs of Mr. Pistell, Vencap, Intervent and Intercapital?

A Yes.

THE COURT: Since about what date?

MR. ORAM: September, 1972, your Honor.

Q MR. Taylor, as I ask you questions about the named defendants, Mr. Pistell, Vencap, Intercapital, Intervent, you understand we may come upon some subjects that involve attorney-client privilege. I will have to ask

for your help becuase your understanding of Mr. Pistell's affairs are best known to yourself and while we want to be helpful to the Court, we don't want to waive any privilege that Mr. Pistell may have.

Can you tell me how you came to be involved with Vencap and Mr. Pistell in the first place?

A As I recall it, Mr. Pistell or my partner Mr. Murphy returned from the Bahamas and Mr. Pistell had negotiated while he was there, an agreement with IIT and I was presented with a document that had been prepared, a draft of an agreement relating to this transaction, and I was asked to review it from the standpoint of international taxation.

MR. ANDERSON: Your Honor, I will have to move to strike whatthe witness testified transpired in the Bahamas. I think that the witness can testify as to what he did, but I don't think he can testify as to what preceded what he did.

THE COURT: I think Mr. Anderson, I am interested in what he had to say so I will let it stand. I don't think it is prejudicial to anybody and --

MR. ANDERSON: If I can have this understanding with counsel and the Court. I think I would at some later point insist on a rather stricter presentation of the story. Since this is a preliminary hearing and we brought it on, questions like that very much aid in the flow.

THE COURT: Yes, I think so too. On the other hand, I think you ought to bear in mind, I have forgotten the number of the rule, but there is a rule which says that if counsel agree a preliminary hearing on an injunction can be subsumed into a hearing on the merits, so I think you ought to have thatin mind and not let anything go by that you would worry about if we were talking about the merits.

MR. ANDERSON: Thank you, your Honor.

THE COURT: All right.

Q I think you just said, Mr. Taylor, you were called upon for certain foreign tax advice.

Tell me, at Havens, Wandless or in your previous employment, had you had any experience in matters of that kind?

A Yes, I had extensive experience. I had spent a year in London with an American law firm where I was principally involved in international tax matters, and securities law matters.

THE COURT: What firm?

THE WITNESS: Coudert Brothers.

Q What were the broad areas of international tax planning, if that is the right word, were you concerned with in the Vencap transaction?

A Well, we were concerned with two aspects. The principal aspect was the U.S. tax attributes or incidence of

the proposed transactions. We were concerned that this company might be either a foreign personal holding company or a controlled foreign corporation.

We were also concerned about the fact that it was proposed to have a Bahamian company and this Bahamian company, it was proposed, would make investments, venture capital investments in the United States and there is no tax treaty between the Bahamas and the United States and therefore all payments made from companies or individuals in the United States are subject to a 30% withholding rate or tax.

Q You were concerned with principally, I take it, to see that it was not resulting in a foreign personal holding company or result in a foreign holding corporation.

Did you purport to pass on matters of Bahamian law with respect to the formation of it?

A No.

Q What did you do when faced with questions of Bahamaian law?

A At any time we felt there was a question of export law, we contacted Bahamian attorneys for Vencap, Carson, Lawson Company and we relied upon their advice regarding these matters.

Q Do you continue to work with Carson, Lawson?

A Yes.

Q As far as you know, are they a reputable firm in the Bahamas?

A They are an outstanding firm in the Bahamas.

Q Mr. Taylor, did ou have anything to do directly with the extraordinary general meeting of the shareholders of Vencap held on the 31st day of August, 1972?

A No, I did not.

Q Did you personally have anything to do with the preparation of a three-page memorandum which I believe has been marked as Plaintiff's 12-278?

A No.

Q Do I take it that those two documents and meetings they represented taken place before you became directly involved with Mr. Pistell and Vencap?

A That is correct.

Q What did you do with respect to the formation of Vencap after you had done the initiation plan?

A We were required to, of course, review the documents that had been prepared by, as I understand it, Carson, Lawson, and I believe the attorneys for IIT.

Q Who were the attorneys for IIT?

A Willke, Farr & Galagher in New York.

Q In connection with the formation of Vencap and its ultimate funding, was that activity carried on in New York?

A No, because as a matter of fact, this was an investment. The attorneys, Willkie,Farr, impressed upon us that nothing could be done in the United States and they explained there was, I believe, the 1967 decree that was adverted to earlier, which prohibited, at least it was their interpretation, it prohibited IIT or any of the associated management companies from doing any business within the United States and therefore they insisted that if a contract was negotiated or if it was executed or if there was a closing, these events all had to occur outside of the United States.

THE COURT: Who insisted on this?

THE WITNESS: Willkie, Farr & Gallagher.

THE COURT: They were representing whom?

THE WITNESS: They were representing as I understood it, the various funds, your Honor, IIT, and the other so called dollar firms.

Q Did the negotiations and execution of documents and the other matters which you have described, in fact take place in the Bahamas?

A That is my understanding. I became involved -- I did speak to the attorneys at Willkie, Farr and there was some suggested changes in the contract which we made and which I don't recall either objected to or we did exchange some correspondence relating to the proposed changes in the

contract, but the contract was executed in the Bahamas and of course the closing was held in the Bahamas.

THE COURT: And it is your understanding that Willkie, Farr thought that was essential to avoid jurisdictional problems with it?

THE WITNESS: I recall I said that it was inconvenient, we would like to close in New York and they said -- instead of going back and forth a two or three hour plane ride.

THE COURT: Did they say why?

THE WITNESS: They specifically told me they could not do this under the 1967 decree.

THE COURT: So there were jurisdictional problems?

THE WITNESS: That is the way I understood it, your Honor.

THE COURT: Is it fair to say that they would have done it in New York if they hadn't felt it would violate the 67 decree, or is that just a supposition?

THE WITNESS: I think they would, your Honor. After all, they are a New York law firm. The closing did require participation of Bahamian counsel, so I think there was a reason why the closing, but the execution of the contract, I don't know that there was any reason other than this jurisdictional one.

MR. ORAM: May I have plaintiff's 12-262?

Q I show you 12-262 and I wonder if you could identify that for us.

A This is an agremeent between Vencap and IIT representing by IIT management company SA. It is dated September 29, 1972.

Q Do you know of your own knowledge where that document was executed?

A Yes. It was executed in Nassau, Bahamas.

Q Were you present at the time of its execution?

A Yes, I do recall that I was there.

Q I note that it is signed, what appears to be by Milton Meissner on behalf of IIT Management Company, is that correct?

A That appears to be the signature.

Q Did you see Mr. Meissner sign that document?

A No.

Q Why not?

A As I recall, the attorneys for Willkie, Farr, they indicated that Mr. Meissner was very busy and he would not be able to attend to execute the contract.

THE COURT: I don't understand what you are saying.

Did you have a meeting?

THE WITNESS: There was a meeting and the meeting was attended by attorneys for Willkie, Farr, but Mr. Meissner did not appear. They said to excuse them, they had to go locate Mr. Meissner and they brought him back for this signature.

Q So in substance after the essential elements of this agreement of September 29th were worked out between counsel, it was taken away from the meeting for Mr. Meissner's signature, is that correct?

A That is correct.

Q The exhibit, 12-262 in paragraph numbered 2, Mr. Taylor, speaks of a closing on October 6, 1972.

Did that closing take place?

A It did.

Q On October 6, 1972?

A No.

Q Will you explain the circumstances?

A As I recall it, we went down there either on the 6th or the 7th. I would have to consult my records to identify the date, but when we arrived --

Q When you say "we"?

A I went together with an attorney who I recall from Willkie, Farr.

Q Do you remember who that was by chance?

A I believe it was either Mr. D'Alimonte or Mr. Ford. I think it was Mr. Ford.

Q When you went to the Bahamas, where di you go?

A We went to the offices of Carson, Lawson & Company where we spent some time going over the closing.

THE COURT: Who are they?

THE WITNESS: Carson, Lawson Company were the Bahamian attorneys who represented Vencap.

A We spent some time with Mr. Wadel at the firm reviewing the closing documents and when everything was in order, I believe we had exchanged all of the relevant documents.

Q The documents that you are speaking of are those that are listed in paragraph 4 of the exhibit?

A That is correct.

Q You exchanged the documents after agreeing as to their form, then what happened?

A The final step as I recall it was payment and they said we should then go to the Bahamas Commonwealth Bank where we would receive the funds.

Q Did you, when you appeared at the bank, receive the funds?

A Not right then. They said there had been some problem in transferring the funds --

MR. ANDERSON: I don't like to interrupt the witness, but now I think we are in an area where I think if there is to be testimony as to what the bank had to say, that should come from soneone in the bank.

THE COURT: No. I will let the witness tell us what he heard.

A They apologized because the funds had been lost and I was concerned. I thought this was an excuse for them not having a closing.

THE COURT: The funds had been lost?

THE WITNESS: That is what they said.

THE COURT: Who said?

THE WITNESS: The manager of the bank-.

THE COURT: He said that to you?

THE WITNESS: He said that and he made telephone calls in my presence.

THE COURT: He said it to you?

THE WITNESS: Yes.

Q Having told you that the funds were lost, what did he do?

A Well, I was present when at least one and I think two telephone calls were made to Luxembourg in which this man, as I was informed, was a temporary manager. He was a former executive of the First National City Bank.

THE COURT: Do you remember his name?

THE WITNESS: I don't recall his name, but his specialty was to open up new banks, to get them operating properly.

THE COURT: With funds that were not lost?

THE WITNESS: Presumably.

A (Continuing) I remember he placed calls. I was present when he spoke with Luxembourg. I believe it was the ODB Luxemborg trying to trace what had happened.

THE COURT: What makes you believe it was ODB Luxembourg?

THE WITNESS: Because we had a receipt which I think we put in yesterday.

THE COURT: Did you hear anything that confirmed your notion that he would be calling ODB Luxembourg? I would see why you thought he might be calling them.

THE WITNESS: The tenor of the conversation was that between bank officers and reference to codes. My recall would be that he was talking to someone who was in a bank. I can't say that it was ODB Luxembourg, but it seemed clear at the time it was. To me I recall that I was reassured because if he was talking to a bank as it appeared, then there was no doubt about the closing actually occurring.

Q Mr. Taylor, when the manager of the bank told you

that the funds were lost, what did you say to him?

A Well, I said that we were surprised but we could understand that this problem could occur and we were prepared to wait while the problem was resolved.

Q Did you wait?

A Yes, we did.

Q How long did you wait?

A At least one or two days, and I believe we completed the transaction on the 9th of October, at which time they had received the funds and they could give us a credit.

Q Mr. Taylor, did you at that time know the source of the funds which were received and which were used to fund Vencap?

A I believe they were transferred from the Luxembourg bank. Based upon the receipt given to us at the closing it did refer to ODB Luxembourg. I assumed that was the source of the funds.

MR. ANDERSON: Your Honor, I move to strike that answer as very speculative. It is the witness' interpretation of a document that is presumably the document that was produced by the defendants yesterday and marked in evidence.

THE COURT: I will allow it. All his answer means to me is he got a document and he is telling me what the document says. He hasn't told me anything about the source of

the funds.

Q Mr. Taylor, did you know of your own knowledge the source of the funds used to fund Vencap?

A No, I did not.

THE COURT: I thought from the colloquy we had a little while ago that you had a notion it came from IIT, is that right?

THE WITNESS: I was positive it came from IIT, but as to the physical source, that is, the actual --

THE COURT: Why were you positive it came from IIT?

THE WITNESS: I assumed that because, again, the deposit slip, the fact that the attorneys were acting --

THE COURT: All right. It's more than an assumption. You were positive.

THE WITNESS: I would say I had no direct proof, your HOnor, or evidence.

THE COURT: You had no reason to doubt that it didn't.

THE WITNESS: That is correct.

THE COURT: It is not correct to say that you thought that the only source of ODB Luxembourg, that it came from this particular fund IIT?

THE WITNESS: Thatis correct.

Q In the course of your negotiation of the agreement

iff's 12-262, the document dated September
ing of Vencap or thereafter, have you ever

met him in any other connection?
soever.
ever met Mr. Leblanc?

ever --
. That is not correct. I did meet Mr.
t was in either October or the middle of
as Commonwealth Bank. This was in connec-
nsaction, proposed transaction when Mr.
one, perhaps two occasions. We were
rneys from Willkie, Farr.
: You said October, November. What

SS: L972.
ng) This was in another transaction, but
in which Vencap was involved.
ver meet Mr. Meissner?

ver meet Mr. Graze?
casion that I can recall.

Q When was that?
A That was during
1972.
Q Did it have any
Vencap?
A No, it idd not.
Q Did--
THE COURT: Did
knowledge, ever meet Mr. Ve
THE WITNESS: Y
him in connection with Mr.
International, your HOnor.
THE COURT: Can
THE WITNESS: I
MR. ORAM: I exp
THE COURT: We w
Any of your othe
THE WITNESS: To
my other partners have had c
named defendants, at any tim
Q Mr. Taylor, can
Intercapital NV is?
A Yes. As I menti
tax problems we were concern

this period in the late summer of

thing to do with the formation of

any of your partners to your
sco?

es. My partner Mr. Murphy has met
Murphy's representation of Resorts

you place that in time?

believe that that --

pect to have Mr. Murphy here.

will leave that.

er partners meet Mr. Vesco?

the best of my knowledge, none of
contact with any of these, the other
e.

you explain to the Court what

oned before, the two principal
ed with, one was the problem of a

Bahamian company that there was no tax treaty between the United States and the Bahamas.

We pointed out, or we were concerned that any, and there were proposed investment in the United States, would suffer, or the return would be diluted or less if a tax plan could not be prepared which would substantially eliminate withholding on interest and dividends.

Q This subject of International tax planning is high on the list of things that I know absolutely nothing about. I would ask you if you would lead me step by step as to the tax planning that went into the formation of Intercapital, NV and what it was designed to do.

A Intercapital NV I would refer to as a lending vehicle. While I was in London we had utilized this tax technique. It was an essential technique that in a similar fashion is exercised by all Eurobond companies; namely a leveraged position whereby the advantage under the United States-Netherlands Tax Treaty can accrue to a company organized in the Netherlands Antille if that company in turn borrows.

The borrowing should be from another bank or financial institution in order for this method to minimize the tax risk of a disregard, or at least under Netherlands Antilles tax law, the risk that they would disallow the interest paid to another or foreign lender.

So, we recommended that as a matter of proper structure, that any investments that Vencap might make in the United States should be in the form of debt and equity. The equity investment we would recommend be made directly because there was not a significant -- there was some tax saving through a Netherlands Antilles company which would elect to take the reduced rate or withholding under the treaty.

However, we suggested, and it was our concept, that there sould be -- in investments, there should be a leveraged position. There should be debt, whether it was convertible or what have you, and that that debt should be debt between the Antilles company and an American company which was the borrower. Therefore, the way that the plan would work, is that Vencap it was proposed that Vencap would make a dposit in a foreign bank, whether in London or Switzerland or whatever. That bank would in turn make a loan, a corresponding loan to the Netherlands Antilles Company, which would in turn make the loan to the U.S. company or resident that was the ultimate borrower.

Q By this method of tax planning, the saving was the difference between the withholding had you done it directly and the small interest and commissions by the Netherland Antilles company if it was done in this route?

A That is correct, because the Antilles required

only a nominal, under their law, a nominal profit which they taxed at a full rate and therefore we disregard the Antilles company as merely a lending vehicle which effectively eliminated the 30% or substantially eliminated the 30% withholding on interest.

THE COURT: That is the thing I wondered about. The withholding would be by whom?

THE WITNESS: The withholding would be by our government in the case of a loan made directly by Vencap because it was a Bahamian company, your Honor. There would be no tax treaty. In the absence of a tax treaty--

THE COURT: How did our government get in the picture?

THE WITNESS: Because a loan made directly to a United States company by a Bahamian company, the interest on that loan is subject to --

THE COURT: What was the United States company?

THE WITNESS: At the time of the plan, there was a United States company that was under consideration. That loan it turned out --

THE COURT: What was the United States company?

THE WITNESS: The company was a company which was involved in the business of tax shelters of very distinguished clients with names of familiarity to us. As I recall they were

going to expand their business, open offices in I think it was Detroit and other cities and they had -- Mr. Pistell had met them at that time and he was interested in funding the expansion.

THE COURT: This would be a loan from Vencap to this company?

THE WITNESS: If it was made directly.

THE COURT: Do you remember the name of the company?

THE WITNESS: I believe it was Stevenson, Bishop & McCreedy.

THE COURT: When was this in the picture?

THE WITNESS: In the fall of 1972. I can't recall the date.

Q Was the loan ever made?

A No.

THE COURT: One of the things in your mind was, if that loan was made, there would be withholding?

THE WITNESS: That is correct.

THE COURT: And a way to deal with the withhodling problem was to make the loan to somebody else such as this Bahamian company?

THE WITNESS: The loan would be made step by step as follows:

Vencap would deposit an amount to collateralize the loan with a foreign bank wherever located except in the Netherlands Antilles.

THE COURT: Of course, I am sorry.

THE WITNESS: That bank in turn would make a loan to the Netherland Antilles company which would in turn make a corresponding loan to the American company.

THE COURT: To which American company, to the same American company?

THE WITNESS: To the company to which Vencap proposed to make the loan.

THE COURT: The same company which you called Stevenson, Bishop & McCreedy in this instance?

THE WITNES: Yes.

THE COURT: If you did it this way, you could save the withholding tax?

THE WITNESS: You could save substantially. Of course you had to pay a small amount of tax in the Netherland Antilles and you had to pay the bank a small commission.

THE COURT: If it went through the Netherland Antilles, you could make the loan to Stevenson, Bishop and save the withholding?

THE WITNESS: 30%, which was a significant part.

THE COURT: What happened to that deal, it didn't

go through?

THE WITNESS: I don't know of my knowledge why it wasn't consummated, your Honor.

Q There is one other company, Mr. Taylor, named as a defendant and that is Intervent, Inc.

Could you tell me what that company is?

A Yes. Intervent, Inc. is a Delaware company which is qualified to do business in Texas and Louisiana. It is a wholly owned subsidiary of Vencap Ltd.

Q What is its business?

A ITs business is investments in oil and gas producing properties in Texas and Louisiana.

Q Has it made such investments?

A Yes.

Q Could you describe the investments it has made?

A Yes.

Mr. Pistell through a business associate, an acquaintance of his, was introduced to a leading figure in the oil and gas business in Houston, a Mr. David Bentliff. Mr. Bentliff had, I believe, a very substantial number of oil and gas properties and he was prepared -- he was an elderly man -- he was prepared to sell some of these properties. These were properties with proven reserves. Oil and gas was coming out ofthe ground and at a rapid rate.

Mr. Pistell thought this was an attractive investment opportunity in the first instance to a private oil and gas company located in midland Texas, the people with whom he was familiar, for an evaluation, their evaluation.

They considered this an attractive investment and there was an understanding that the investment would be made jointly by a company which Mr. Pistell was associated and by the private oil and gas company in Texas.

MR. ANDERSON: Your Honor, if I may, we have had about a paragraph in that of what Mr. Pistell did, and I move to strike.

THE COURT: I will let it stand. It is perhaps of historical interest. Of evidentiary value, not much. I understand we are going to hear from Mr. Pistell and we can hear it from him better than this witness.

MR. ANDERSON: Thank you.

Q Perhaps, Mr. Taylor, to ease the Court and Mr. Anderson you would direct your answers to those items of which you have personal knowledge.

A Well, we were requested to advise Vencap and Mr. Pistell how the purchase of these producing oil and gas properties could be accomplished.

Our concern again was the problem of a foreign company which might be deemed, or we felt would be regarded

as engaged in trade or business within the United States if it purchased such properties and therefore we recommended that a domestic subsidiary be established for the purpose of accomplishing this transaction.

Q Was such domestic subsidiary established?

A It was.

Q Is that Intervent, Inc.?

A It is.

Q Did Intervent, Inc. make the investment to which you have referred?

A That is correct.

Q What was the magnitude of that investment?

A The magnitude of the investment was slightly less than $900,000.

Q Thatis the investment that Intervent made, $900,000?

A Yes.

Q And Intervent is a wholly owned subsidiary of Vencap?

A Yes.

Q Does Intervent hold that investment today?

A No.

Q Then when did it dispose of it?

A It disposed of it four or five months after the purchase which was in I beiieve March or April of this year.

Q Do you know of your own knowledge the price received by Intervent when it disposed of that asset?

A Yes. The amount was $1,100,000.

Q Mr. Taylor, you have read the complaint?

A Yes.

Q You are aware there are allegations with respect to a loan in the amount of $590,000 made to Mr. Pistell?

A Yes.

Q Do you know of your own knowledge which company, if it was one of these companies, made that loan?

A Yes, Intercapital.

Q Made the loan in the amount of $590,000?

A Yes.

Q At the time that that loan was arranged, did you seek any advice as to the propriety of the loan?

A Yes. We consulted with Carson, Lawson with regard to Bahamian law on the subject.

Q Did they advise you with respect to the propriety?

A Yes.

Q What was that advice?

A That it was entirely proper and they gave citations in I believe the memorandum of association.

Q At the time the loan was made, was it collateralized?

A Yes.

Q What was the collateral, if you know?

A There were shares of an oil and gas company in Texas.

Q Do you know whether the shares collateralized in the loan would have been a proper investment for Vencap?

A We were so advised by Bahamian counsel.

Q You were advised by Bahaman counsel that the shares themselves, the collateral, would have been an appropriate investment?

A I don't know that we were specifically advised as to the collateral itself. We were advised as to the loan.

THE COURT: You were advised what, as to the loan?

THE WITNESS: We were advised that the loan itself was proper under Bahamian law and particularly as it related to the memorandum and articles of association of this company, Vencap.

Q What about the collateral, was that part of the advice?

A The collateral under Bahamian law, Vencap was entitled to invest in any securities wherever located. There was no restriction in the nature of its investments, whether they were closed end, venture capital.

THE COURT: Did the advice from Carson, Lawson, did they advise you with respect to the collateral?

THE WITNESS: They were aware that the loan was collateralized but I don't think they specifically directed themselves to the question of the nature of the collateral.

THE COURT: Am I correct in assuming that as lawyers they would tell you about the law but not whether or not it was a good loan as a matter of business judgment?

THE WITNESS: That is correct.

MR. ORAM: May I add to the record the exhibit number when we find out what it is. I propose to show the witness a memorandum of association of Vencap Ltd., and I direct --

Q I direct your attention, Mr. Taylor, to Paragraph number 28 and ask you wehther that is a paragraph which permits the lending of funds of Vencap?

THE COURT: How about 12-297?

MR. ANDERSON: That would be another copy. It is also in Exhibit 10.

MR. ORAM: That is exactly correct, your Honor.

MR. ANDERSON: Your Honor, I would object to Mr. Taylor testifying with respect to Bahamian law. I think if he wants to tell us what paragraph 28 of the Articles of Association is in the interest of mkaing it clear, I wouldn't have any objection.

THE COURT: There is no question yet. He has just been referred to paragraph 28.

MR. ORAM: I have a question not as to Bahamian law.

Q Does that paragraph 28 deal with the subject of loans to be made by Vencap?

A Yes.

Q What does it say with respect to such loan?

THE COURT: I am not sure what Mr. Anderson's objection is now. I think what it says we can all read. It is a short paragraph.

What is your point? I don't mean to cut you off.

MR. ORAM: I think the paragraph -- what I am getting at, the memorandum of association provides for loans by Vencap, either secured or unsecured.

The document will speak for itself, your Honor, and I won't pursue it any further.

THE COURT: It says in the first line, to lend money either with or without security.

MR. ORAM: More than tha, your Honor, I think it also says to directors and officers as well.

THE COURT: That is correct.

Professor Segal was asked about this yesterday, was he not?

MR. ORAM: Yes, he was.

Q In the advise you received from Carson, Lawson,

with respect to this loan, did they refer specifically to that paragraph?

A They referred to a paragraph. I believe it was this paragraph.

Q Mr. Taylor, let's think back a moment to our earlier discussions about the funding of Vencap and the arrival of the funds.

When those funds arrived, what was done with them?

A Well, they arrived and I think because of this confusion, they had already become a time deposit so we were at theclosing given a credit and advice that they were holding $3,000,000 for the account of our client, Vencap.

Q Did the funds remain in that bank?

A No. They were removed from that bank in an entire amount almost immediately.

Q When you say almost immediately, what does that mean?

A Within two or three days after the deposit was credited to a call account of Vencap.

THE COURT: In what bank?

THE WITNESS: In the Bahamas Commonwealth Bank.

Q Where were they transferred?

A To the Chase Manhattan Bank in London.

Q Why were they transferred?

A Well, as I recall it, the rate paid, the interest paid by the Bahamas Commonwealth Bank was low. It was not competitive with the rate paid --

THE COURT: The question is why and you say "As I recall it." Do you know why?

THE WITNESS: Yes, your Honor, I believe I do. I recall we pointed this out to our client and I think it is reflected in the credit slip. The rate was quite low and the client undertook -- there were checks made with major banks--

THE COURT: You don't know why the client did it. All you know is you told him he can get a better rate of interest in London?

THE WITNESS: Yes. In fact, I believe it was done in order to get a much higher rate of interest on the deposit, Euro-dollar deposit.

MR. ORAM: Your Honor, I propose now to turn to another subject and review essentially with some documentation the questions raised in the complaint and in Mr. Anderson's affidavit with respect to expenses, costs, houses and so forth, and I don't know your Honor's pleasure on adjourning or continuing.

THE COURT: I take it you are suggesting that this would be a good time to adjourn?

MR. ORAM: I am.

THE COURT: What is your convenience.

MR. ORAM: Two o'clock. I don't believe I have too much more with Mr. Taylor and it will give Mr. Murphy a chance to arrive.

MR. ANDERSON: That is fine, your HOnor.

THE COURT: Two o'clock.

(Luncheon recess taken.)

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AFTERNOON SESSION

2:00 p.m.

D A V I D T A Y L O R, resumed:

DIRECT EXAMINATION CONTINUED

BY MR. ORAM:

Q I believe you testified that you traveled to Nassau on the closing of the Vencap transaction, with an attorney from Willkie, Farr whom I believe you identified as Mr. Ford?

A Yes.

Q Or Mr. D'Alimonte?

A Yes.

Q I show you a letter dated October 9, 1972 and ask you if you can identify it.

A This is a copy of a receipt that we received at the closing.

MR. ORAM: May I have this marked as Defendant's Exhibit N.

(Defendant's Exhibit N, marked for identification.)

Q Referring to Defendant's Exhibit N for identification, does that refresh your recollection as to who you traveled to Nassau with at the time of the closing?

A Yes. The signature there is that of Arthur

Richardson of the Willkie, Farr firm.

MR. ORAM: I offer Defendant's Exhibit N.

MR. ANDERSON: I have no objection.

(Defendant's Exhibit N, received in evidence.)

MR. ORAM: Mr. Anderson, may I have the accountant's work sheet, I believe it's 16-1?

MR. ANDERSON: Yes.

Q Mr. Taylor, I show you Plaintiff's Exhibit 16-1 and ask you if you are familiar with that document?

A Yes.

Q Can you tell me the circumstances under which it was prepared?

A Yes. Mr. Pistell was requested by the SEC to give testimony in I guess it was April or May of this year and we requested to ease the SEC staff in the development of their testimony. We testified on behalf of Mr. Pistell that the accountants for the company prepared this schedule.

Q Did you request the accountants to prepare the schedule?

A Yes, I did.

Q Is this the schedule they prepared or a copy of it?

A Yes.

Q Did the accountants deliver the schedule to you?

A Yes, they did.

Q When they delivered it to you, did they review it with you?

A Yes, they did.

Q Mr. Taylor, is it your understanding from this document that the amounts listed under salaries include the amount of $150,000 for Mr. Pistell's residence?

A Yes.

Q I refer you to the affidavit filed in support of the motion for a preliminary injunction in which it is suggested that in computing the amounts --

THE COURT: Which affidavit?

MR. ORAM: The affidavit filed by Mr. Anderson in support of his motion, your Honor.

Q In computing the amounts attributable to Mr. Pistell personally, there was an amount of $356,640.62 being the total of salary and advances from the period beginning in 1972 to and including April 30, 1974. In addition to that amount, an amount of $150,000 for his house.

Is it your understanding that that allegation is correct?

A No, it's not.

Q Did there come a time, Mr. Taylor, when Mr. Pistell entered into an employment agreement with Vencap?

A yes.

MR. ORAM: I am having difficulty, your Honor, becuase of the dual system of marking these exhibits .

MR. ANDERSON: I have it right here, I believe.

Could you give me the reference to the doubling up paragraph in the affidavit to which you just referred?

(Discussion off the record.)

Q I show you Plaintiff's Exhibit 14-29A and ask you if that is a copy of such employment agreement?

A Yes, it is.

Q Does that agreement provide for an annual salary to Mr. Pistell of $60,000?

A Yes, sir, it does.

MR. ORAM: I know, your Honor, attached to a copy that I have the employment agreement, there is an additional letter, May, 1973 and it doesn't appear to be an attachment to the exhibit in evidence. I wonder if this is a different exhibit?

MR. ANDERSON: It does have a different exhibit number. The exhibits is not signed.

THE COURT: I do not have a copy of that letter.

Can you tell me, Mr. Oram, who signed the letter for Vencap?

MR. ANDERSON: Your Honor, that certainly is an

authentic copy. That agreement was entered into. We agree it was. We simply did not happen to have an executed copy. It was signed by Mr. Blackman for Vencap and Mr. Pistell for himself.

MR. ORAM: This is my understanding.

MR. ANDERSON: Is that correct, Mr. Taylor?

THE WITNESS: Yes.

MR. ANDERSON: I suggest that it be put in evidence.

MR. ORAM: Can we mark this, please?

(Defendant's Exhibit O, marked for identification.)

MR. ANDERSON: No objection.

(Defendant's Exhibt O, received in evidence.)

THE COURT: The letter talks in the first paragraph about $150,000 and then it confirms in the second paragraph a payment of $100,000.

MR. ORAM: I was about to ask the witness if he could tell us the circumstances that led up to the execution of that letter, if he knows.

MR. ANDERSON: I would object unless he knows of his own knowledge, your Honor.

MR. ORAM: I don't know whether he knows or not, your Honor.

Q Can you answer that question, Mr. Taylor? Do you

know of your own knowledge the circumstances which led to the execution of that document?

A Yes, I do.

Q Would you explain them to the Court, please?

A Yes. Mr. Pistell had at the time of incorporation ofVencap, had received a fee. The fee was in the amount of $150,000.

He had agreed with a Mr. Burke, who was since deceased, a Paris broker, that Mr. Burke would recieve $50,000 ofthis fee so that Mr. Pistell would then be entitled to $100,000 of the $150,000 fee. That fee was deposited at the time of the opening of the initial bank account of Vencap into the Vencap or new Vencap bank account.

THE COURT: I take it you know that because Mr. Pistell told you?

THE WITNESS: And Mr. Burke. I met Mr. Burke in the Bahamas at the time.

THE COURT: Are you willing to take that, Mr. Anderson?

MR. ANDERSON: Your Honor, I will take that on the basis that I believe that that is consistent with the story that Mr. Pistell will tell. It is clearly hearsay.

MR. ORAM: And has told.

MR. ANDERSON: I beg your pardon? The reason I know

he will tell it is because he has told it previously.

I don't -- if Mr. Pistell does not take the stand, I will ask to strike this.

MR. ORAM: Mr. Pistell is going to take thestand and he can verify the testimony of this witness.

Q So, Mr. Taylor, the $100,000 fee that Mr. Pistell was entitled to and did receive as a result of this transaction, was deposited in the Vencap account, is that correct?

A Yes.

Q Referring once again to Exhibit 16-1, the accountant's sheet, were the amounts shown as advances in salary to Mr. Pistell in part returned to Mr. Pistell of his own $100,000?

A Yes. During 1972, approximately $100,000 approximately, was paid to Mr. Pistell, which on this schedule, $25,000 is identified as salary.

Q At what monthly rate was Mr. Pistell's salary to be paid pursuant to his employment agreement?

A $5,000 a month.

Q Do you know from your discussions with the accountants, what period in 1972 as shown on 16-1, this exhibit purports to cover?

A Yes, for five months he was paid at that rate.

Q So the months of August, September, Ocotober, November and December?

A Yes.

Q Mr. Taylor, in Mr. Anderson's affidavit filed in support of this motion, he alleges in sum, I believe $1,052,000 and some dollars was attributed to Mr. Pistell personally. That is, the funds of Vencap in that amount were used by Mr. Pistell personally.

We have dealt with the loan in the amount of $595, 000. You have just testified with respect to the amount shown on 16-1. There remains a loan in the amount of $55,000. Can you tell me where that came from?

A That came from Intervent, the subsidiary.

Q Was that loan collateralized?

A Yes, it was.

Q What was the collateral?

A The collateral was Mr. Pistell's commitment to grant a mortgage on his residence in the event that the loan was not repaid by December 31st of, I believe, this year.

Q The resident we have been talking about, is that or is that not the principal office of Vencap?

A That is the office of Vencap. Vencap has no other ofice.

THE COURT: What is the amount of that loan?

THE WITNESS: $55,000. It is not reflected on this schedule, your Honor. This is a schedule of compensation to

Mr. Pistell.

THE COURT: Do you know how much he paid for the house?

THE WITNESS: The house, I believe, I am told, your Honor, cost in excess of $150,000. That is including improvements, I believe.

Q Mr. Taylor, at my request in reviewing Exhibit 16-1, have you had an opportunity to compute the amounts in salary and the house that Mr. Pistell under his agreement was entitled to as opposed to the amounts shown as salary and advances on that exhibit?

A Yes. I believe that computing his salary at the rate of $5,000 a month for that approximately, I guess, 20-month period, the $150,000 which he is entitled to under his employment agreement and the $100,000 fee which he received, which was returned to him by Vencap, that would add up to, I believe, $350,000.

Q Looking at Exhibit 16-1, what amount of salary does it show that Mr. Pistell has received from Vencap for the period 12/31/73 to 4/30/74?

A For the year 1973?

Q For the four-month period ending April 30, 1974?

A It doesn't show any salary being paid to him for that four-month period.

Q Does it show any advance?

A It shows an advance of $3,000.

Q According to the records prepared by the accountants, the amount received by Mr. Pistell from Vencap for the period January 1, 1974 to April 30, 1974, is $3,000?

A Yes.

Q Finally, in Mr. Anderson's affidavit he lists in paragraph 20D certain expenses in the aggregate amount of $51,000, $51,007.13.

Have the accountants regularly employed by the company examined those expenses?

MR. ANDERSON: Your Honor, I will object to this on two grounds. The first is, I think, questions relating to what is or is not in this affidavit are strictly argumentative and leading.

Furthermore, I think that if we are to have testimony by the accountants who have prepared a schedule showing some 300-odd thousand dollars in compensation, we should know directly from them what if anything is wrong with their schedule.

THE COURT: I don't think much of your first point, Mr. Anderson. I think your second point is worth considering. I think I will allow the question, however.

It does seem to me, Mr. Oram, there must be a better

way to get this fact into evidence so we are all sure of it, but I will allow you to go ahead.

MR. ORAM: I might point out, your Honor, the witness has testified that he caused the accountants to prepare this exhibit for the specific purpose which he outlined, that he reviewed it and I am really asking him what this exhibit means to him, what it shows to him. If Mr. Anderson insists, I will call the accountants.

THE COURT: All it means to him, that doesn't have much probative value. I am interested in knowing what the exhibit means to me.

MR. ORAM: It has been testified to.

THE COURT: Why don't we go ahead and see where we go.

BY MR. ORAM:

Q I refer to paragraph 20D, as I was mentioning, Mr. Taylor, with respect to certain expenses, the amount of $51,007.15. I ask you whether you know of your own knowledge whether the accountants have reviewed those expenses?

A Yes. They prepared the books. They keep the books and they make a review if not monthly, from time to time.

Q Have the accountants in their review booked those as ordinary and necessary business expenses of Vencap?

A That is my understanding.

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THE COURT: Say that again?

(Record read back by the reporter.)

MR. ANDERSON: Your Honor, I think the question here is one for the Court to determine whether those are ordinary and necessary business expenses.

MR. ORAM: Let's use it Mr. Anderson in the way --

THE COURT: Mr. Oram, I suppose that is a conclusion that cannot be reached by an accountant in terms of this lawsuit and I suppose it is a question that is open to me.

MR. ORAM: Ultimately I agree. I merely used the phrase in the accounting parlance.

THE COURT: All right. What do you understand as ordinary and necessary business expenses?

THE WITNESS: Ordinary and necessary, your Honor, has a tax connotation, namely, expenses which is incurred in the business of a company, let us say as distinct from personal expenses.

THE COURT: You are talking from a tax connotation?

THE WITNESS: That is what I would regard it as.

THE COURT: What about apart, from a tax convenience? Did you mean to attach anything when you used those words to a statement other than as a tax convenience or were you talking about the operation of the business?

THE WITNESS: Normally if you have expenses which

are ordinary and necessary in the sense that they are expenses ofthe business , they are deductible by the company and of course when there is reimbursement, they are not chargeable to the employee of the company, as distinct from expenses, let us say that are personal in nature that are deductible by the company if they reimburse the employee but they are compensation to the employee.

THE COURT: So when you use the phrase, you are using that with the income tax significance in mind?

THE WITNESS: Yes.

Q Mr. Taylor, while you have been involved with the affairs of Mr. Pistell and his companies on behalf of Havens, Wandless, Stitt & Tighe, have you, or do you know of any occasion when you were or any member or association of the firm, ever acted in other than in a professional capacity as lawyers advising Mr. Pistell?

A None whatsoever.

MR. ANDERSON: I don't think the question or the answer has any probative value and I appreciate that the witness who is under some pressure here should be given the opportunity to publicly make that statement.

Q Mr. Taylor, as an attorney for Mr. Pistell, did you ever participate in any conspiracy to defraud the shareholders of IIT?

A Never.

Q Do you have any information which leads you to believe that such a conspiracy existed?

A Absolutely none.

MR. ORAM: You may inquire.

CROSS EXAMINATION

BY MR. ANDERSON:

Q Mr. Taylor, is it correct to say that the accounting work sheet, Plaintiff's Exhibit 16-1 was prepared by Vencap's accountants?

A That is correct.

Q What is the name of that firm?

A Field, Tiger, Krell & Werber.

Q Where are they located?

A They are located -- their main office is in Long Island.

Q After the preparation of this exhibit, you reviewed a copy with them, is that your testimony?

A Yes, that is correct.

Q After your review of the copy of Plaintiff's Exhibit 16-1, you furnished that exhibit to the Securities and Exchange Commission, is that correct?

A That is correct. We offered to do this for their benefit.

Q That was in connection with the deposition of Mr. Pistell?

A Yes.

Q And counsel for other parties in that, let's call the 5001 case, were present during that deposition, is that correct?

A I think you and your Mr. Kellner were present. I think one other attorney or two other attorneys were present initially.

Q Do I read this exhibit correctly when it says 1972 compensaion $100,640.62?

A The total, that is correct.

Q In 1973, compensation, $210,000; is that correct?

A That sounds correct.

Q 1974 compensation of $20,000; is that correct?

A Are you talking about actual? You are talking about the footnotes to the memo. No, the footnote here indicate the amount to which he was entitled, $20,000.

Q Do the records furnished by the accountants to you and by you to the SEC, show compensation during the periods 1973, 1974 -- I am sorry, 1972, 1973 and 1974 of $331,640.62?

A Yes. Thatwould be correct in the sense that the accountants prepared a balance sheet at April 30th which showed, as I recall, an advance, salary advance to Mr. Pistell. I

think that is what you are referring to and in fact, that there was an error on the part of the accountants which when this document was furnished to the SEC, was not detected in that there was not an advance in that amount.

Q In other words, the total --

A The balance stated there was a salary advance when in fact Mr. Pistell was entitled to an amount and the accountants -- this goes back to an earlier period. If you look at the total compensation, if you look at the footnote, you may be somewhat confused, Mr.Anderson. If you look at the actual amounts of the salary and advances, that is a correct amount.

Q So that the accountants total of compensation of $331,640 is off by the amount of $20,000; is that correct?

A This is the correct amount that was received by Mr. Pistell, $356,000. These are like footnotes or annotations to the schedule.

Q Let's take it this way:

Do the accountants for Vencap show 1972 compensation of $101,640?

A That is correct.

Q For 1973, $210,000.

A That is the amount that they show that they understood he was entitled to.

Q Did you at any time subsequent to the deposition of Mr. Pistell inform the parties to that other lawsuit that the figures in Exhibit 16-1 were incorrect?

A Yes. I advised, I believe Mr. Lanzoti as soon as it was discovered.

Q And you told him?

A There was an error against Mr. Pistell.

Q Of $20,000?

A Approximately. I don't believe we advised him in writing if that is what you are suggesting and therefore I assume you don't have a copy of it.

MR. ANDERSON: Your HOnor, I think that the question with respect to the addition of the $356,000 in paragraph 20C of my affidavit and $150,000 house expenses in paragraph 22 was both argumentative and incorrect. We did not intend to leave the inference, because the exhibit we had clearly indicates that the house expenditures were within the three hundred-odd thousand.

Q Mr. Taylor, I believe it would be correct to state as a result of the experiences during the testimony on Mr. Pistell's deposition and otherwise, that you are the person really most familiar with the export structure and books and records of Vencap and other associated companies, is that correct?

A In the sense that I know the relationships between the various companies, that is correct, the structure as you refer to it.

Q Do I understand you correctly that Mr. Pistell and Mr. Blackman each own fifty percent of Vencap?

A That is correct.

Q And that Mr. Pistell and Mr. Blackman each own fifty percent of Intercapital NV?

A Yes.

Q And that Mr. Pistell and Mr. Blackman each own fifty percent of Conservative Capital?

A I think you might qualify the fifty percent by saying, Mr. Anderson, for sake of completeness of the record, they each own fifty percent of the common stock. Of course, IIT is a participant, one-third, participates as to one-third of the dividends, so I think you should mention that in fairness.

Q I did not mean to be unfair and I appreciate the correction.

MR. ORAM: Mr. Taylor, would you mind speaking up a little bit? I am losing you.

THE COURT: Let's go back to that point a moment.

IIT had what interest in Vencap?

THE WITNESS: It has a one-third participating

interest, your Honor.

THE COURT: Through the preferred?

THE WITNESS: Yes, through the preferred stock.

THE COURT: So the other two-thirds is owned by whom?

THE WITNESS: One-third, if you will, by Mr. Pistell, and one-third by Mr. Blackman.

THE COURT: So what we are showing on the chart is just the common stock except for the little note you just made.

THE WITNESS: If you took an account of the equity.

Q Let's put this down:

Mr. Pistell has 5,000 common, is that correct?

A I don't recall the exact number of shares. He has fifty percent of the common shares outstanding.

Q Mr. Blackman?

A Has the equivalent number, and that is counting qualifying shares held by the firm under Bahamian law. You have to have qualifying shares held by Mr. Pistell.

THE COURT: Do the preferred shares have any voting rights?

THE WITNESS: No. I think they may have in the event of certain events but I would have to review those

Q So IIT then has 30,000 preference and it has a

warrant to buy another 30,000.

A 30,000 preference shares having a $100,000 par value.

THE COURT: This is what I am not clear on.

Do either Blackman or Pistell have any preference shares?

THE WITNESS: They have no preference shares. IIT for reasons only known to IIT and its attorneys, decided they wanted to have preference shares rather than ordinary shares.

THE COURT: They only get one-third?

THE WITNESS: They get one-third.

THE COURT: Of the realized profits?

THE WITNESS: Yes.

THE COURT: How do the other two-thirds get to wherever it goes by virtue of that agreement, I take it?

THE WITNESS: I am sorry, which agreement are you referring to?

THE COURT: As I understand it, IIT gets one-third

THE WITNESS: Yes.

THE COURT: Of realized profits.

THE WITNESS: Yes.

THE COURT: Where do the other two-thirds go?

THE WITNESS: They would be split, one-third to Mr. Pistell and one-third to Mr. Blackman.

THE COURT: That is my understanding and that is pursuant to what document?

THE WITNESS: That is pursuant to the original agreement between IIT and Vencap represented by Mr. Pistell. It is attached to the September 29th agreement.

THE COURT: Which I haveindicated as 12-262 and 12-261.

BY MR. ANDERSON:

Q So we are clear, is IIT entitled to anything other than pursuant to the terms of the preferred stock which is Exhibit A to the September 29, 1972 agreement which is Exhibit 12=262 in this trial?

A No. It is pursuant to the terms that are attached to that agreement of the preference shares and these were, as I already testified, these were terms that were negotiated with Willkie, Farr acting for IIT.

Q Judge Stewart used the term "realized profit." I would like to have you refer to Exhbit 12-261 and see the defined term there is realized profits or residual earnings.

THE COURT: Residual earnings was the phrase I was trying to recall. That is what I was talking about.

Q Mr. Taylor, residual earnings might or might not include unrealized profits, is that correct?

A That is correct and that residual earning, of

course, is after the payment of the six percent of the 3,000,000. In other words, that was the first deduction.

THE COURT: I was merely trying to recall the label used in this agreement. I didn't mean to imply that I thought there was any special distinction between realized and unrealized profits.

I was trying to recall the language, that's all.

Q Would it ease you in determining how many sahres Mr. Blackman and Mr. Pistell own to review Exhibits 10 and 11?

A This exhibit is any series of different documents. I am sure that someplace in this I can find the reference.

Here is the register of the members which show that originally there were 4,000 shares issued, 5,000 were authorized initially, and of those 4,000 shares, 2,000 were issued to Mr. Armoury de Reincourt of Geneva, Switzerland and 1,595 were issued to Mr. Pistell and 5 other sahres which I believe are qualifying shares were issued to Carson, Lawson or their employees.

Q So that Mr. Pistell has 2,000 shares, is that correct?

A He had, at the time, 2,000 shares, at the incep= tion.

Q Do you recall very recent testimony by him that his total investment in Vencap as of the date of his testimony

on I believe May 5th or 6th was $2,000 cash or 2,000 shares.

A That was the par value of his investment.

Q Now, do I have on the board the capitalization correctly, Blackman, 2,000 shares of common; Pistell, 2,000 shares of common and IIT, 30,000 shares of preference stock plus warrants to buy another 30,000 shares?

A That appears correct.

THE COURT: Is it Blackman or the other man with the French name?

THE WITNESS: de Reincourt was the original man. Blackman subsequently acquired those shares.

Q By the way, you are the executive secretary of Vencap, is that correct?

A Yes.

Q In response to your subpoena, did you provide us with Exhibit 10 as a complete set of what we would call here the proceedings of the stockholders --

A I didn't say it was complete. I provided you with what we received from Carson, Lawson.

Q Are there other proceedings of stockholders minutes of which we do not have copies?

A I haven't had a chance to review it. I am assuming this is probably complete.

Q I show you Exhibit 11 which is copies of the directors minutes and ask you if that appears to be a complete set of the proceedings of the directors of Vencap?

A Again, I think I should state for the record, Mr. Anderson, that since thisis not -- if I had reference to the original I would be a little more comfortable. After all, these exhibits were handed over to the SEC and they were photocopied and I am assuming what was in the original has been photocopied so I am assuming it is correct.

On that basis I am assuming yes.

Q You handed those originals to the SEC?

A We handed the originals to the SEC. These are Xeroxes and this is an SEC notation.

Q You handed those to us again on Friday. Do you recall handing the originals over?

A Right.

Q Those are Xeroxes of copies that you gave to us and they appear to be complete.

A I know there are some things that were mis-Xeroxed by the SEC and I just noticed that this is an SEC designation so I will not necessarily assume this is complete because they did the Xeroxing.

Let's assume for the moment it is.

Q Let's establish for the moment that it is.

Do the originals bear the SEC notations on them?

A I think they do, yes. I believe so.

Q Referring to Exhibit 11, the last page, there is a signature, President. Do you recognize that handwriting?

A That is Mr. Pistell's signature.

Q Beneath that, assistant secretary.

A That is mine.

Q In the line J.CJ. Wadel, there is handwritten part of the word "assistant." Is that in your handwriting?

A It looks like mine.

Q And there is an interlineation on the export resolution which is the second from the last document in Exhibit 11. Is that your handwriting?

A Yes, correct.

Q Let's go back to the chart.

Other than Mr. Pistell and Mr. Blackman, are there any other stockholders in Intercapital NV?

A There are none.

Q Are there any other equity interests?

A No.

Q Do Mr. Blackman and Mr. Pistell own Conservative Capital in equal shares?

A Yes, exactly.

Q Does anyone own any other class of shares of Conservative Capital?

A I am excluding qualifying shares.

Q Qualifying shares are beneficially owned?

A They are shares you have to have owned under Bahamian law but they are beneficially owned by Mr. Pistell. I assume there are five in the case of Conservative Capital as I assumein the case of Vencap.

Q Do you know that Mr. Pistell owns some stock interest in Flag Redfern Oil Company?

A Yes.

Q Because there was prior testimony at an earlier date with respect to Pomike; is that the same company?

A It is the successor by way of merger to Pomike.

Q Does Conservative Capital own stock in Chibex Mining Company?

A Yes.

Q Do you know approximately how much?

A 2,100,000.

Q Out of how many shares?

A There are approximately, outstanding now, I would say 4,500,000 shares. This number keeps increasing by reason of conversion of outstanding debentures. If you took into account a full dilution, that is a full conversion of

outstanding warrants, the amount would reach perhaps 6,700,000, thereabouts.

Q Does Conservative Capital own equity interest in any other companies?

A No.

Q Is it correct that Vencap owns 100% of the common stock in Intervent?

A Yes.

Q So called wholly owned subsidiaries?

A Yes.

Q Is it correct that Vencap owns 51% of the stock of Sangin?

A Yes. Beneficially it is 51% owned.

Q And of record, who is the owner?

A As of record, the shares have not yet been issued, but there is an agreement which gives them the right to 51%.

Q Does Vencap own any equity securities in Intervent and Sangin?

A Other than common stock?

Q I am sorry, it has securities position in a number of companies, is that correct?

A It has perhaps almost $1,000,000 or $900,000 of marketable securities. You have the list.

Q Other than the securities shown in inventory in Plaintiff's Exhibit 14-19, Intervent and Sangin, does Vencap have any other equity interest?

A I think once again I can say to my knowledge, no. I obviously want to note that the date on this letter to the SEC written by my partner, James Glavin, is dated May 3rd and therefore I am assuming that this list supplied to the SEC staff is accurate as of that date.

Q As of the date of Mr. Glavin's letter then, the exhibit to which you just referred --

A Excuse me, I want to note that it says here in the letter, you will find enclosed Schedule C reflecting Vencap's security position as of April 30, 1974. That is the date which the accountants had cut this off.

Q I am sorry, did I use a different date?

A I referred to May 3rd. I think the letter itself speaks of April 30th.

Q As of April 30th, 1974, the total equity interest of Vencap represented by Exhibit --

A I don't think that is entirely correct if you hand me the balance sheet as at April 30th. This after all purports to be a list of the securities position and it is essentially -- the denomination is traded securities and goes on for a number of pages.

THE COURT: I suppose,Mr. Taylor, I am not sure about this, but I suppose what Mr. Anderson is getting at is, not what the figures in the balance sheet might show, which might include a figure for good will or property used as a business office. I guess what Mr. Anderson is getting at and what I am interested in, does Vencap, as far as you know, have any other investments other than those listed on this inventory, as of April 30th, plus their interest in Intervent and Sangin?

THE WITNESS: Yes. There is in the balance sheet another investment shown which is shown as "Other" $19,000. I believe it is correct, that represents an investment in Tanga Manga, a Mexican mining venture which is not yet represented by securities because of a problem relating to the proper Mexicanization of a placa, a mine, gold mine.

THE COURT: Do you know of any changes of any kind in the inventory of April 30th?

THE WITNESS: I believe there have been purchases to which our stipulation refers, of the stock of Newmark, your Honor. We referred to that the other day. Other than that, I am not aware of any change in the securities position.

Q Does Intercapital N.V. own equity in any other company?

A No.

Q Refer to Plaintiff's Exhibit 10 and specifically the memorandum of association of Vencap, Ltd.

First, can you tell us what is meant by "memorandum of association"?

A The memorandum of association is, I would say, the equivalent of our articles of incorporation, roughly speaking.

Q Would you refer to the first paragraph there and tell me the name of Vencap which has caused us quite some puzzlement?

A This appears to be -- I think what you are referring to is what looks like an error. I would have to see the original. This say the name of the company is Conservative Capital, Ltd., which although it is denominated a memorandum of association of Vencap, Ltd.

Q It looks like somebody may have pulled out the wrong form.

A That is quite possible

Q Conservative Capital and Vencap, to your knowledge, are two separate companies, is that correct?

A That is right.

Q And the name of Vencap is Vencap and the name of Conservative Capital is Conservative Capital?

A I think we can check and advise you as to that point.

THE COURT: Has anybody ever looked at the memorandum of association of Conservative Capital to see what it says for the name of that company?

THE WITNESS: I think we are going to do that your Honor, right after this proceeding.

Q You did not furnish a copy of the export records of Conservative Capital to us, did you?

A No.

Q Do you know whether Mr. Pistell is an officer or director of Flag Redfern?

A No, he is not.

THE COURT: You don't know?

THE WITNESS: He is not.

Q Who are the officers and directors of Conservative Capital?

A The directors are Mr. Pistell, Mr. Blackman and Mr. Raymond Lawson.

Q Would you identify Mr. Lawson?

A He is a member of the firm of Carson, Lawson, the law firm in the Bahamas.

Q And the officers and directors of Vencap?

A Are the same.

Q You have given me directors.

A The officers of Conservatove Capital, I am doing this from memory, are Mr. Pistell, who is President -- one of these companies he is chairman of the board as well. I think it's Vencap.

The executive vice president is Mr. Blackman. A Mr. Raymond Lawson is a vice president and assistant secretary and until recently, Mr. Wadel is no longer with Carson, Lawon, he was a director and assistant secretary and I am an assistant secretary.

Q Who are the officers and directors of Intercapital N.V.?

A That is an interesting question. There was a sole managing director of Intercapital N.V., But I think perhaps --

MR. ORAM: Your Honor, I overlooked inadvertently a telegram which bears on the question that Mr. Anderson has asked Mr. Taylor. Perhaps I can given him the Telex and Mr. Anderson can inquire about it.

THE COURT: Mr. Anderson wants to see it first.

Is that the Telex that was passed around earlier?

MR. ORAM: I don't believe so. This was a Telex that was received in our office.

MR. ANDERSON: I have no objection to that Telex.

THE WITNESS: Would you like me to read it?

THE COURT: You read whatever you think you need to.

THE WITNESS: I think it is relevant.

It is addressed to my attention dated June 14th.

THE COURT: From whom?

THE WITNESS: Dr. Schiltkamp in the Netherlands Antilles:

"It is with great dismay that I received today ... the papers with respect to claim of IIT as Plaintiffs against Intercapital, Mr. Pistell and you which lawsuit took place today in the United States District Court, Southern District of New York.

"The fact that Intercapital N.V. is a defendant in this case has shocked me tremendously and I regret very much that my name was mentioned in the requested order. Since I am not, nor my office is, nor Export Trust N.V. is linked with nor want to be linked with Vesco or Pistell or want to be involved in lawsuits, I inform you I am not willing to act any longer as legal advisor of Intercapital N.V. and that Export Trust N.V. resigns as of today as its managing director.

"Please inform me to whom the file has to be submitted. If I have incorporated any other company which to

your knowledge has ties with one of the defendants in the aforementioned lawsuit, the same attitude will be taken.

"I hope you will inform me about that. I am sorry to inform you I am very disappointed.

"Sincerely yours, Schiltkamp."

MR. ORAM: I would like to offer it.

MR. ANDERSON: No objection.

(Defendant's Exhibit P, received in evidence.)

THE COURT: Now we have a pending question. Who were the officers?

THE WITNESS: The sole managing director of Intercapital N.V. has resigned so there are no managing directors and there are no officers under Antilles law, so we have a corporation without a directorship.

Q You are aware, are you not, that Dr. Schiltkamp is the trustee for Venture Fund?

A Yes, I am aware of that fact. I talked with Dr. Schiltkamp and I held him in high regard and esteem.

THE COURT: What do you mean "trustee"?

MR. ANDERSON: The equivalent of our Luxembourg liquidators I would say, roughly, your Honor.

THE COURT: Appointed by whom?

MR. ANDERSON: Appointed by the Luxembourg

Court to attempt to obtain the assets and perform the same function that our liquidators are performing. I understand, roughly. The procedure may be more analagous to bankruptcy practice than an equity receivership.

THE COURT: I guess we are getting off the track but I thought there was somebody in Canada who was at least purporting to exercise receivership authority with respect to Venture Fund or at least Venture Management.

MR. ANDERSON: I am sorry, let me correct that. I understand Dr. Schiltkamp was appointed by the Luxembourg Court. I meant by the Netherlands Antilles Court.

I don't know the relationship your Honor, that he has with the Canadian receiver.

THE COURT: I don't think we need to take the time now to try to sort that all out.

Go ahead. I take it the witness can't tell us who is running Intercapital?

THE WITNESS: At the moment, your Honor, we have no managing director.

THE COURT: Nobody is running the company?

THE WITNESS: At the moment until such time as we can find a replacement and I daresay with this kind of a telegram, it is going to be difficult to find a replacement.

THE COURT: Suppose decisions have to be made,

you mean they won't be made?

THE WITNESS: Your Honor, under Netherlands Antilles law, until there is another managing director appointed, I don't know how actions can be taken. We will have to obviously consult with Dr. Schiltkamp as to what suggestions he has.

I might say it is to my great regret to receive such a Telex from a person whom I have been associated and dealt with for a number of years.

THE COURT: I understand that. What I am concerned with, Mr. Taylor, and I am sure you will consider this problem promptly, I am concerned about somebody running the company. I assume you will let me know whatever you think I ought to do, if anything.

THE WITNESS: Yes, your Honor.

Q What assets does Intercapital N.V. have?

A It has principally two loans that are outstanding and it has liabilities of approximately an equivalent amount.

Q Those two loans are loans to Mr. Pistell, is that correct?

A No. One loan is to Mr. Pistell. One loan is made to Intervent.

Q So Intercapital N.V.'s assets would be an

account receivable from Mr. Pistell or no account receivable from Pistell?

A I am tyring to do this by memory. If I had documents in front of me -- I believe we furnished the SEC with a balance sheet of April 30th, ofIntercapital N.V. and since you have everything they have, I assume you have it.

MR. ANDERSON: I move to strike the portion of the witness' answer in which he says, that he makes reference to his assumption about what we have. I will, after consultation with my colleagues, I will represent that we do not have Intercapital's balance sheet. We have a ledger -- I don't think this is particularly pertitnent.

Q Intercapital N.V. has loaned money to Mr. Pistell and to Intervent and that is the best, off the top of your head?

A Two basic loans have been made. One loan is the loan we have heard testimony about which was the secured loan in the amount of $595,000 and which there was a corresponding loan made by, or if you will, a debt to a Swiss bank and there was another loan made. The loan was made to Intervent, Inc. and that loan was in the amount of $700,000, approximately, and that was, as I described before, for the purpose of saving the withholding tax.

Q If you know, who are the officers and directors

of Sangin?

A Well, as of the moment, we have only recently received the so-called export kit and it's intended -- we haven't had time to complete the transaction, but it is intended that Mr. Pistell will be an officer as well as Mr. Kokdemir and there is at present an attorney in Florida who is secretary of the corporation. That is in process in terms of completing the documentation.

Q If you go by old law school rule that a corporation isn't formed until its stock has been issued and the payments received, then Sangin has not yet --

A The company is formed and the amount has been paid in. I am saying we only recently received this export kit from Sangin because it has been established by Florida attorneys for Mr. Kokdemir.

THE COURT: I take it Mr. Taylor, and Mr. Anderson, you went to different law schools?

MR. ANDERSON: No, your Honor, I gave up export law.

Q If you know the officers and directors of Intervent?

A The president and treasurer is Mr. Pistell. I am the secretary of Intervent. One of my associates -- Mr. Ed Sampson is an assistant attorney. He is an oil and gas

attorney in Texas and I believe that is it. There is only one director of Intervent. Mr. Pistell is the sole director.

Q If I ask for the officers and directors of Chibex, how many officers are there?

A There are nine directors. The Chibex directors are Mr. Dean Witter, of the Dean Witter Investment Banking House. Mr. Donald Douglas, who is the former deputy administrator of mines in Ontario, he is president of that company. Mr. Jiles LaPlant, chairman of the board of Lazare,Hill, a paper manufacturing company in Montreal; Mr. Phillippe Roberge who is a partner and a notary in Montreal; Dr. Stanley Maleuf, who is a well known geologist and director of exploration for a well known New York mining company; Mr. Pistell; I am a director; Mr. James Booth, who is a partner of Darry, Mitchner & Booth, a leading firm of consulting geologists in Toronto and Mr. Stapells, who is a partner of the firm of Stapells & Seward, I believe it is, in Toronto.

I think that adds up to nine.

Q I believe you testified that Mr. Pistell was entitled to a $150,000 fee at the time of the incorporation of Vencap, am I correct in that recollection?

A He put a fee of $150,000 into the corporation and immediately $50,000 was paid to Mr. Burke to which Mr. Burke

was entitled. This is the time that Mr. Pistell gave a release for, this was in the nature of a finders fee, professional fee, whatever you would like to denominate it as.

Q That was in connection with the San Cristobal deal

A That is correct.

Q Do you have any knowledge of the deal and the $150,000 fee other than what you have been told by Mr. Pistell?

A No, other than that I happen to be in Nassau Bahamas at the time that that fee was paid and I was consulted regarding the terms of the proposed release which Mr. Pistell gave to that company and I said I didn't see, if I recall, I don't think there were any changes in the text of the release. The release was a property release.

Q But as far as who earned that fee or how it was earned, do you have any knowledge, independent?

A No. I have no knowledge of how Mr. Pistell earned that fee, if that is what you mean.

Q Of your own knowledge, do you know whether that is a Vencap fee or a Pistell fee?

A Of my own knowledge, personal knowledge?

Q Yes.

A I have no personal knowledge, but I was told and the circumstances surrounding its payment suggested to me

intended and was a Pistell fee.

THE COURT: The fee as far as Vencap was concerned was how much?

THE WITNESS: Your Honor, if I might explain it?

THE COURT: I thought it was $150,000, now I hear it's $50,000?

THE WITNESS: It was $150,000 but Mr. Pistell had agreed with Mr. Burke to pay him $50,000. I guess Mr. Burke had been involved somehow in the transaction.

Q Do you know whether or not Mr. Pistell was working for Vencap when that fee was produced?

A He started working about that time. The company was incorporated in June or July, thereabouts.

Q Approximately when was it that that fee was received, as you recall it?

A I would think it was either at the end of July or the beginning of August.

THE COURT: Your question about this $100,000, are you saying it should have been taken into Vencap or what is your problem?

MR. ANDERSON: Quite to the contrary, your Honor, our contention is, and I think that basically the only number difference that you will find between the plaintiff's presentation and the defendants', is whether or not that fee was a

Vencap fee or as the witness has testified, belonged to Mr. Pistell personally.

All I want to know from this witness is what he personally knows about the earning of that fee.

THE COURT: I understand that.

What is your position? Was it supposed to be a Pistell fee or a Vencap fee?

MR. ANDERSON: A Vencap fee.

MR. ORAM: For the record, your Honor, our position is that it is a Pistell fee.

THE COURT: I sort of assumed, Mr. Oram, from the position -- that Mr. Anderson took, that would be your position.

Q Mr. Taybr, you have referred to making a number of trips to the Bahamas in connection with the closing or signing of documents.

Were you acting as an attorney at the times you were in the Bahamas?

A That is correct.

Q Is there any problem of a New York lawyer practicing down there doing what you did?

A If you are suggesting that I was practicing Bahamian law, Mr. Anderson, I would, with all due respect, defer to that suggestion. I was practicing in connection,

we are advisors to Mr. Ppstell and Vencap and particularly on international tax matters.

I think that the record, if you had the complete record, rather than just the SEC record, would reflect that we had consulted extensively, in fact almost every time we were in the Bahamas, with Carson, Lawson & Company and I suppose it is fair to say that we did make some judgments or we certainly had some ideas about export law because we were also export attorneys as well as tax attorneys.

Q I did not mean to imply in my question that your activities in the Bahamas were in any way improper and if that was implicit, I apologize.

THE COURT: You were practicing, I take it, as a United States lawyer?

THE WITNESS: That is right, your Honor.

Q All I was trying to do was establish that you were acting as a lawyer during those periods.

I show you a copy of Plaintiff's Exhibit 31 and ask you if you can, tell the Court the meaning of the abbreviation "T&E".

A Well, this is the first time I have seen this list .

MR. ORAM: Which exhibit is this, Mr. Anderson?

MR. ANDERSON: 31.

MR. ORAM: These are the ones that were introduced this morning, the summaries?

MR. ANDERSON: Yes.

A Perhaps you could tell me, Mr. Anderson, how these were prepared. Perhaps I could guess as to what they mean.

THE COURT: Isn't there a better way to do it than to ask the witness to guess?

Q Let's go to Exhibit 35, 14-35, the ledger sheet of Vencap and run down a few of the items.

A Let me just see what I am looking at first of all.

What I am looking at now appears to be a copy of the general journal and ledger which was furnished to the SEC in connection at the time of the deposition in May. I know it has the SEC's exhibit number of 35 for identification, so I assume this is a copy of the journal, the complete journal entries for Vencap furnished to the SEC, is that correct?

Q What you have in front of you is a copy of the journal that you furnished to us either Friday night or Saturday and the original was returned to you on Sunday.

A All I am trying to make clear for the record, Mr. Anderson, is that there was some question after we had furnished the documents to the SEC, whether we got back every one ofthe documents we furnished them and since I see the SEC's

identification on the front of this, I am assuming, therefore, this is not the journal that we furnished to you, but it is a copy that was furnished to you by the SEC, that is the only point I am trying to make.

Q And your assumption is incorrect in that regard.

Do you recall furnishing us the original?

A I see a designation that was put on at the time this was furnished to the SEC, am I correct or am I wrong?

Q Does the original as returned to you by the SEC--

A I believe we have the original. Would you like to refer to the original?

MR. ORAM: May the witness come and find it? He is the only one who knows these documents that well.

THE COURT: Why don't we take a couple of minutes right now.

(Recess taken.)

THE WITNESS: For the record, your Honor, I would like to correct an implication in my answer that the original records were not stamped by the SEC. I have looked at the original ledgers and inside there is an SEC notation.

BY MR. ANDERSON (Continued):

Q Referring to the original which is somewhat easier to read than the Xerox which has been marked in evidence, I would like to haveyou help us out with a few abbreviations.

THE COURT: Is this 14-35 that we are dealing with now?

MR. ANDERSON: Yes, your HOnor.

Q There appears the abbreviation, Bank N/S. Do you know what that means?

A I think that is probably the Bank of Nova Scotia.

Q BOC, is Bank of Commerce?

A Where is BOC?

Q I am sorry.

HWS&T?

A That would stand for Havens, Wandless, Stitt & Tigue.

Q You have been through this ledger before today, is that correct?

A Only to a very limited extent. When Mr. Pistell was testifying, we had this in front of Mr. Pistell so he could refer to the ledger.

Q Does A.D.V.R.C.P. stand for advance, Richard C. Pistell?

A Yes, that would be my understanding. This is the handwriting and this has been done by the accountants for the company and having seen this before, I would say that that is correct.

Q Does the T&E stand for travel and entertainment?

A I would think so, yes.

Q "PROF" --

A Just for the record, I might say I have had no occasion to cross examine the accountants on this but I assume that T&E means travel and entertainment.

Q But you at least did take enough time to satisfy yourself to some degree that the expenditures reflected in this exhibit were ordinary and necessary with in your tax definition?

A No. I haven't been involved in that process at all. The accountants have been involved in the process. My contact with this has been for one purpose. Until this proceeding was brought, that was to ease the SEC staff in their proceeding.

Q Would you review the Vencap general ledger, please, and tell me whether any place in that ledger it is indicated that Vencap owes Pistell $100,000 with respect to the San Cristobal fee?

A Mr. Anderson, I think if you want to direct that question to the accountants, I think it would be an appropriate question.

THE COURT: I think all you are asked to do is look at the ledger and tell us what you can see there.

THE WITNESS: It runs on for any number of pages.

I will look and see if I can find something. Perhaps Mr. Anderson could direct my attention to it.

Q You know there is no account payable there for $100,000 to Mr. Pistell.

A You say I know there is no account payable there forMr. Pistell in the amount of $100,000. I don't follow you. I think you are making an assumption or a legal conclusion, aren't you?

Are you saying is there one single item in here in the amount of $100, 000?

Q Let me ask you this:

As a tax lawyer, is it usual in your experience that when a company owes an officer an amount of money that that amount of money will be set up on the books of the company assuming the amount was a loan, the financial records of the company I intend to see.

A I think it would be set up at such time there was an agreement that reflected it and assuming the accountants were aware of it, yes.

If you are asking me now, you are assumign that this document is 100% accurate in the sense it reflects every transaction, I can't testify to that. I assume the accountants are in a position to.

THE COURT: Is this document in evidence?

MR. ANDERSON: Yes, it is.

THE COURT: Then we don't need to find out from the witness what is in it.

Q Do I recall your direct testimony that you commenced working on Mr. Pistell's matters in September, 1972?

A I think I testified that I started working with respect to Vencap in September of 1972.

Q But you had earlier worked on matters relating to Mr. Pistell?

A I had worked on some matters relating to Mr. Pistell.

Q You in fact have a general power of attorney from Mr. Pistell, is that correct?

A I and one of my other partners have a general power of attorney, that is correct.

Q That is the New York limited power of attorney form , is that correct?

A I believe so, yes.

Q In connection with your discussions with Mr. Carson or members of the Carson firm, did you ever seek an opinion as to the propriety of expenditures and loans by two controlling stockholders of a company set up for the purpose for which Vencap was set up and capitalized as Vencap is capitalized where the expenditure is over a 20-month period aggregated 711,000 or

more dollars and the loans indirectly to one of the officers totaled $645,000 out of a total capitalization of $3,010,000?

A Did I with respect to all these transactions?

Q With respect to the totality of these transactions, did you seek Mr. Carson's views?

A I can say that we have sought their views recently as a result of once again, as I guess you would say, after this proceeding was commenced, but we have not, as to the totality, we haven't sought their views at any prior time.

THE COURT: Did you ever get any expression from them in the past as to the legality of the Bahamian law as to any of the transactions that we have been considering.

THE WITNESS: Yes. We sought their advice specifically, as I recall, and I might say I am not the only partner that works or deals with them, but I recall having obtained, sought and obtained their advice regarding the $595,000 loan and that advice was that it was entirely lawful and proper under Bahamian law.

THE COURT: I take it the advice you got as to each of the transactions you know about their having given advice, was that it was appropriate.

Mr. Anderson's question was, taking into account all of these matters, did you get any advice from these lawyers in the Bahamas about the totality of these relationships?

THE WITNESS: I can say that we did seek to reconfirm after this proceeding was commenced. I did speak to Mr. Lawson and I did describe to him again, I reminded him about the advice we had sought with respect to the loan. I also mentioned to him that the employment contract was being challeng and I askedhim was there anything he was aware of or knew of that made in any sense improper or unlawful and the advice was it was entirely proper and lawful obviously based upon the facts I had provided to him.

I think I can say that we certainly have considered in connection with any significant or material transaction this aspect as to whether we gave anyconsideration in respect to let us say, the Intervent loan which was, after all, a loan made by a Delaware company, not with that firm.

THE COURT: I can't hear you.

THE WITNESS: As to the Intervent loan, there was no consideration given by that firm, with respect to it being a Delaware company.

MR. ANDERSON: Your Honor, may Mr. Oram and I approach the bench?

THE COURT: Yes.

(At the side bar.)

MR. ANDERSON: Your HOnor, I want to ask this witness about this check made out to Burke, but also this

check, and I am mindful of your admonition and also mindful of the fact that a reporter to whom I have refused to speak during a proceeding, except to say hello, is here.

THE COURT: He is not here now, is he? Where is he from?

MR. ORAM: The Wall Street Journal.

THE COURT: I am not sure what the problem is.

MR. ANDERSON: The name there is Robert Vesco.

MR. ORAM: I appreciate that, Mr. Anderson.

MR. ANDERSON: I guess we could go ahead as long as there is no reporter here because the only other spectator here is a girl from my office.

THE COURT: Unless you have a reason, I can't see why you are not entitled to go ahead even with a reporter here, although I appreciate your concern.

MR. ORAM: I do know and I think it was a gesture on Mr. Anderson's part which I appreciate.

(In open court.)

Q Mr. TAylor, I show you a copy of Plaintiff's Exhibit 14-42B, which are files, I believe you furnished to us with respect to the Vencap account at the Bahamas Commonwealth Bank, Ltd. and ereferring to the record of checks issued to or deposits received from, I ask you to read the date, and first check.

A The first check is dated 7/31, number 1, and it appears to be Mr. Joseph Burke.

Q Is that in your handwriting?

A No, it is not my handwriting.

Q What is the second check?

A The second check is dated 8/1, number 2, and it appears to be Mr. Robert Vesco in the amount of $10,000.

Q Are there any entries on that sheet containing Mr. Burke's name in your handwriting?

A No,none of those are in my handwriting.

Q I will flip through the other records of checks issued or received which are the first four or five pages and ask you if there are any of those in your handwriting.

A I don't see any.

Q Do you know whose handwriting the check to Mr. Vesco appears in?

A I couldn't tell from the handwriting, but I think, knowing the circumstances, I think it is Mr. Pistell's.

THE COURT: Knowing what?

THE WITNESS: The circumstances. We furnished these to the SEC. I would say based on that knowledge, I believe it is Mr. Pistell's.

THE COURT: I don't see the connection.

THE WITNESS: We furnished this to the SEC in

connection with the deposition and this is one of the items that I reviewed at the time so from that I am familiar with the fact even though it doesn't appear to be, it is Mr. Pistell's handwriting.

THE COURT: All right.

Q As I understand it, there came a time when Vencap indirectly loaned $590,000 to Mr. Pistell, is that correct?

A That is correct.

Q Is it also fair to say that you negotiated that loan?

A When you say negotiated, Mr. Pistell, I accompanied Mr. Pistell to Zurich, Switzerland where the loan was negotiated. I acted as the attorney at the time of the transaction. Mr. Pistell negotiated it with an officer or officers of Handelskredit Bank.

Q Do you recall the names of those officers?

A One was Dr. Lieber. I don't recall the name of the other. There was another officer.

Q Did you meet Carl W. Heshmon?

A No, I never met him.

Q How did those funds go from Vencap to Mr. Pistell?

THE COURT: Which funds?

MR. ANDERSON: The $590,000 loan.

A As I recall, relying on recollection, I believe

there was initially a deposit at Handelskredit Bank, a time deposit in the amount of $600,000 and Mr. Pistell went to Zurich. Negotiations were held at the bank regarding the loans to Intercapital. Thatloan was made about February 1st of 1973. I think that was the date which has been discussed by Telex before, perhaps, but it resulted in the necessity of involvement of the Netherlands Antilles too.

The closing, I think you could say, the negotiations and closing that were made with the Swiss bank were made at the end of January, the beginning of February, 1973.

THE COURT: What was the amount in the Swiss bank?

THE WITNESS: $600,000.

THE COURT: What was the name of the bank?

THE WITNESS: Handelskredit Bank.

THE COURT: My recollection as usual is faulty, but I had a recollection that the amount was larger.

THE WITNESS: There was a later time deposit in this bank but that was for another transaction, your HOnor. The totality of deposit was approximately $1,300,000.

THE COURT: I thought at the time of this transaction, the amount was somewhat larger than $600,000.

Q There was also a subsequent loan?

A Yes, the Swiss bank, Handelskredit Bank made a loan

in the amount of $590,000 to Intercapital N.V. which immediately made the so-called back to back loan to Mr. Pistell.

Q Was there a second loan made to Mr. Pistell in the amount of $55,000?

A Not to my knowledge. There was a loan made by Intervent which is an American, Delaware company.

Q LEt's talk about the first loan. Vencap placed funds in Handelskredit Bank and Handelskredit Bank in turn made a loan to Intercapital N.V.? Is that correct?

A Yes.

Q And Intercapital N.V. then loaned money to Mr. Pistell?

A Correct.

Q Handelskredit Bank has security, does it not, for the loan from Handelskredit to Intercapital?

A The deposit in effect is collateral because if Intercapital fails to pay the loan when due, then they can look to the deposit.

Q So there is collateral as between Handelskredit Bank and Intercapital N.V.?

A I don't know if you would want to say it is between the two banks. They regard the collateral as the collateral of Vencap. Like a compensating balance, if you want to make that analogy.

THE COURT: What you are saying, Mr. Taylor, is that Vencap can look to two people for the proceeds of this loan, is that right?

THE WITNESS: Well, in the event of a default, the bank would be entitled to look at these funds and therefore Vencap would be subrogated in my view to the rights of the bank vis a vis Intercapital and also vis a vis Pistell. The secured loan by Intercapital is secured by a pledge of shares so there is collateral that goes beyond just the collateral of the time deposit because the loan by Intercapital is secured by approximately 40,000 shares of Flag Redfern owned by Mr. Pistell.

There are two forms. The bank can look to the collateral of course if it wants to. It can also look to the time deposit, if you will.

Q So Vencap's cash is the bank's security for the loan to Intercapital which then went to Mr. Pistell?

A It is a form of security because in fact there are really two forms of security. There are the sahres of Flag Redfern, formerly Pomike or the time deposits.

THE COURT: That is what I was getting at.

Q In the three steps that this took, Vencap to Handleskredit to Intercapital N.V. to Mr. Pistell, there is security as between Handelskredit Bank and Intercapital and

security as between Intercapital and Mr. Pistell, is that correct?

A That is right. There is security -- there is double security, if you will.

Q Is there any security as between Vencap and Handelskredit Bank?

A When you say is there any security, Vencap has the right, obviously, to take over if there is a default. Vencap can take over the bank's position. The bank has the deposit. It is also secured by the pledge of shares. In a sense, Vencap is entitled to or derives the benefit -- but this is not, I must emphasize, for tax purposes this is not done so that Vencap -- you don't want to lose sight of what the purpose here is.

The purpose of this arrangement as I have already testified, is that Vencap is making a loan but it is making it indirectly so there will be, from a tax standpoint, the proper result as far as withholding is concerned, but Vencap is in effect secured if you want to look at the totality.

THE COURT: To put it so I can hopefully understand it, suppose Mr. Pistell doesn't pay back to $590,000. I take it he hasn't paid it back yet.

THE WITNESS: It is not due yet. He hasn't paid it yet.

THE COURT: Suppose he doesn't and he goes to the moon or something?

How do you get the $590,000?

THE WITNESS: Then Intercapital who is entitled if there is a default and presumably Intercapital will default on its loan to the banks. The bank has an option. It can either look to the time deposit or it can look to the collateral the shares that have been pledged.

THE COURT: The time deposit is where?

THE WITNESS: The time deposit, Vencap has made the deposit at Handelskredit Bank.

THE COURT: That is the amount of $600,000?

THE WITNESS: Yes.

THE COURT: So there is $600,000 in a bank somewhere?

THE WITNESS: That is the bank making the loan.

THE COURT: How long does it stay there?

THE WITNESS: It stays there for the same period that the loan is outstanding to Intercapital, which I believe is until December 31, 1975.

THE COURT: Why go through two steps, why didn't Mr. Pistell take that $600,000 instead of the $590,000?

THE WITNESS: For the same reasons I explained, your Honor, with respect to the tax planning, that had he done

that directly, then he is a U.S. citizen although he is perhaps probably not for tax purposes a U.S. resident, there would be withholding. There would be 30% withholding on the loan which he received.

So, the model which we had conceived for loans to U.S. Companies was employed in this case, your Honor.

Q So if Mr. Pistell defaults, then per force, Intercapital will have to default, isn't that correct?

A I am assuming so. I will make that assumption. It doesn't necessarily follow. If Intercapital has another loan, then I assume -- let's make that assumption, there would be a default.

Q Does Intercapital have assets anywhere sufficient to pay a $590,000 loan?

A No.

Q So that if Mr. Pistell defaults, Intercapital will default to Handelskredit Bank?

A I think that is a safe assumption.

Q Isn't it also a safe assumption that the first thing that Handelskredit Bank will do will be to seize Vencap's $600,000 that it has on deposit?

A I think by reason of the relationship that one obviously has with a Swiss bank, they, unlike some American banks who are a little less thoughtful or courteous when there

is a default, the likelihood is they would give the ultimate owner of that stock a chance to dispose of it in an orderly fashion. I would rather expect that would be the case.

Since the collateral, I understand far exceeds in value the amount of the loan, I would think that they wouldn't necessarily act precipitously or immediately to look to that deposit. They would not release the deposit, I am sure, until they were repaid, they would only release it to the extent they had been repaid.

Q So to be clear then, a U.S. bank would seize the $600,000 time deposit but you feel because of some peculiarity of Swiss procedure or relationship with Mr. Pistell, that would not happen in this situation?

A I am not saying that every American bank would do it but I would say they would probably be quicker to look to the compensating balance.

THE COURT: And the stock held by the Swiss bank?

THE WITNESS: Yes. The Swiss banks --

THE COURT: Is the stock endorsed?

THE WITNESS: I believe it is, your Honor, in the sense it has been pledged. You mean endorsed over in black, I would say so.

I think the answer is, the correct answer, it depends. If the amount of the collateral, the value of the

collateral --

THE COURT: Let's go back to the stock a moment. What stock in what company?

THE WITNESS: This is Flag Redfern Oil Company, your Honor. I believe we attached it.

THE COURT: Yes. They recently merged with a company with a Hawaiian name?

THE WITNESS: Yes.

THE COURT: Is there a market value for this stock? Is it traded?

THE WITNESS: It is a private company. I don't believe it is traded over the counter, your Honor. I think ifyou will look at the exhibit, you will see that they have a very substantial net worth and earnings. I think Mr. Pistell can probably testify more effectively than I could, particularly since we have a chart here which shows a connection of Mr. Pistell to Flag Redfern, in that Mr. Pistell by reason of merger of Pomike into that company has a stock interest in the company and I can tell you from my own knowledge having dealt with the people at Flag Redfern Oil Company, that it is a very outstanding oil company, but I think that will be best elicited from Mr. Pistell rather than from me.

Q Would it be your experience in loan situations where the loan was collateralized that the lender would hold

the collateral?

A Noramlly the lender would hold the collaterl if you are talking about a bank.

Q That would mean pieces of paper, stock certificates, CD's and things like that.

What does Vencap hold with respect to this indirect loan to Mr. Pistell?

A Vencap, if you will, has the rights of subbrogation if any of those funds have to be used in the event of a default.

If you ask me which piece of paper they have an agreement with the bank from which that right can be derived, Mr. Anderson, I take it your question is to suggest that there perhaps is some propriety or something wrong with this lack of a piece of paper and I would point out that Mr. Pistell was best advised that Vencap should not directly hold such a piece of paper if he wanted to have the valid tax plan. I think thatis important that you not lose sight of that.

Q Was Intercapital N.V. set up to make money?

A No, it was not set up to make money. It was set up as a lending vehicle.

Q Is there any tax reason that Intercapital N.V. could not have been made a subsidiary of Vencap instead of owned by Mr. Blackman and Mr. Pistell?

A yes, because that would incur a tax risk which we advised the client that if the Netherlands Antiles Company with this type of an arrangement is a subsidiary, there is a risk that the deduction for the risk paid by the Antilles company may be disallowed. We can't say with any certainty that would occur.

The best or ideal perfect tax plan is one in which, ifyou will, the ultimate lender does not hold the stock of the Netherlands Antilles company in this type of a situation.

Q I want to go through with you very briefly some of the check in 14-42B -- I'm sorry, 14-44B.

First, would you tell the Court what that document is?

A Well, it appears to be copies, and again I won't reiterate what I said before about there being produced voluntarily with complete and full disclosure to the SEC staff. I think these are identical unless you tell me otherwise, to what we furnished to the SEC staff.

All of the checkbooks, all of the deposit slips, all of the debit invoices relating to the Bank of Commerce New York for the account of Intercapital N.V. That is what it appears to be.

Q What is the address of Intercapital N.V. , as shown on the bank records that you furnished to the SEC?

A It is shown care of Havens, Wandless, Stitt & Tigue, my attention, 99 Park Avenue, New York.

Q I call your attention to check number 11 to the Yale New Haven Hospital in the amount of $7,180 and ask you if you know what that expenditure was for?

A Yes. I am certain that was for one of Mr. Pistell's daughters who was hospitalized at the time.

Q Would you refer to the check for $250 to Kaey, Sholer, Fierman, Hayes & Handler.

A It's a law firm.

Q That check was in connection with a collection proceeding against Mr. Pistell, wasn't it?

A I believe so, $250.

Q Is there also a check in there to Franklin National Bank for 44-odd thousand dollars?

A 46,000-some odd dollars.

Q All of the checks to which we referred were signed by you, is that correct, Mr. Taylor?

A IT appears to be that these were checks signed at the time disbursements of the proceeds of the loan and I assume therefore Mr. Pistell was out of the country when they were signed.

Q And you paid a judgment against Mr. Pistell for some $2,700 out of those funds, didn't you?

A There is a judgment of the Sheriff of the City of New York which I assume was a levy of some sort.

THE COURT: What was the $46,000 check?

THE WITNESS: I assume that was a loan Mr. Pistel had outstanding at that bank. $46,000 would have been a loan due to the Franklin National Bank.

Q At the time you wrote that check, Mr. Taylor, you knew that that loan wasin default, did you not?

A That is correct.

THE COURT: I don't understand. The records you are looking at are Intercapital's records?

THE WITNESS: He is referring me to the opening ofthe account when the funds were at this banke when they were disbursed, the $590,000 was disbursed fro Mr. Pistell's account. These were items which were all charged to Mr. Pistell.

Q In other words, the check there to Franklin National BAnk was to pay a loan of Mr. Pistell's which was in default, is that correct?

A That is my understanding.

Q And the $2,700-odd dollars to the Sheriff of the City of New York was to pay a judgment that had been obtained?

A I think it was a levy that the Sheriff had made.

MR. ORAM: May I inquire? I take it Mr. Taylor is testifying that these are the checks drawn to disburse the

funds, the proceeds of the loan which he has just testified to.

Do we advance matters by going through how those funds were disbursed?

THE COURT: I am beginning to wonder. I take it itis conceded that the money was used by Mr. Pistell to pay his own debts and obligations.

MR. ANDERSON: If it is also conceded that Mr. Pistell is judgment proof, then I don't need to go through any more of this .

MR. ORAM: Of course there is no such concession.

MR. ANDERSON: I have only two or three more.

THE COURT: All right.

Q Would you refer, Mr. Taylor, to checks you wrote to the Internal Revenue Service and state what those are for?

A I think these checks were issued -- I know two of them were the same date. It was probably a closing. 60,000 for the State Tax Commission, approximately. Another one in the amount of $11,000 and one in the amount of $222,818 to the IRS. They seem to have the designation for Richard C. Pistell with his account number or identification number or Social Security number, which probably means perhaps that is the notation by the Internal Revenue Service.

Q And you knew that those were in payment of past due federal income taxes, is that correct?

A Yes, I did.

Q And you knew that the checks written to the State Tax Commission were in payment of past due New York State taxes, is that correct?

A That is correct.

You say past due. I think there were amounts claimed. I don't recall as to the State taxes whether they were past due or whether there was a dispute.

Mr. Anderson, I am reminded of Mr. Oram's caveat that we are now very deeply into the attorney-client area and I hesitate to characterize these when I haven't reviewed the record and I certainly don't particularly, with Mr. Pistell present in the courtroom, think it is particularly appropriate.

If you want to examine Mr. Pistell with respect to these matters, I think it would be much fairer.

Q I am sorry. I did not intend to be unfair.

MR. ANDERSON: Your Honor, the purpose of examining Mr. Taylor is simply because he is considerably less loquacious than Mr. Pistell and I thought we would get through it a lot faster.

MR. ORAM: You say that only because you don't know Mr. TAylor as I do.

Q I apologize. I think there is some tenseness here that is really certainly not warranted on my part and I

appreciate your patience.

A I hope you can appreciate my position.

THE COURT: Let's go ahead.

Q In connection with the negotiation of the Handelskredit $590,000 loan, do you recall whether ornot you signed those loan agreements?

A I don't recall having signed any loan agreements.

Q I refer you to the terms and conditions of the preference stock, one copy of which is contained in Exhibit 10, particularly paragraph 5, with respect to the redemption of the stock.

A Yes.

Q I take it that it is your testimony, it was your prior testimony that you negotiated that with Willkie, Farr, is that correct?

A You use the word negotiate. I argued about what I thought were better terms thatn was in the draft that was presented to me and I think they accepted some of the suggestions which I made, Mr. Anderson, just as you normally would argue in favor or your client for better or more favorable terms. I don't know that they accepted all of my suggestions.

Q I intended to use the word negotiated in the sense that Mr. Oram used it when he asked you about the negotiation of that document.

A Well, the entire contract was negotiated and the essential terms were all determined and arranged in the Bahamas before I even saw this document, so I must say with all due respsect and humility, my involvement and my contribution to this document was limited.

Q Well, referring to paragraph 5, would you tell us, please, the terms upon which the 30,000 shares of preference stock owned by IIT may be redeemed by the common shareholders?

A It says, I will read it for you, the company at its option may redeem out of any profits --

THE COURT: What are you reading from?

THE WITNESS: Thisis attached, your Honor, to the Setpember 29th agreement. This is another exhibit. It appears in many places.

THE COURT: I have it at 12-262.

THE WITNESS: Paragraph 5.

MR. ANDERSON: It's the same document.

THE COURT: You don't need to read it. It's in evidence.

Q Does that provide that the preferred can be redeemed at any time by the payment of $3,000,000 plus 6% on the $3,000,000 from the beginning of the year in which the redemption occurs?

MR. ORAM: I think, your HOnor, the document

speaks for itself. If it is helpful to have Mr. Taylor answer the question, he can go ahead.

THE COURT: I don't see point in the question. I can see that it provides what you just asked. I think if you want to lead into something here, why don't you assert what the provision of the paragraph provides, then ask the question?

MR. ANDERSON: I just wanted to be certain that the witness agreed with that reading of it.

Q Is that correct, Mr. Taylor?

A With all due respect again, we are reading a provision and this has to be read in conjunction with the memorandum and articles of association and if you are asking me for my opinion on this subject, once again, I would defer.

Q Well, let's see --

A I think it says whatyou are intending it to say.

Q What is the maximum price that IIT could receive from a redemption of those shares, and I will suggest to you that it is $3,180,000. Is that correct?

A I would just on a superficial reading of it, I would tend to agree with you, Mr. Anderson. I am not certain that is what it was intended to state. Again, I would remind you that this agreement, that IIT was represented by what I consider a distinguished law firm, and I think your comments are directed --

THE COURT: No, Mr. Taylor. No need to get into that.

A If you are asking me, if you wanted my opinion whether I would have acting on behalf of IIT would have found this provision, wanted to make a revision or a change, I would tell you but I at no time acted in that capacity.

Q When you say that the essential terms of the agreement were agreed to in the Bahamas, are you stating that on the basis of your own personal knowledge or on the basis of something you heard?

A On the basis of something I heard, because I have already testified I was not involved at the time that the transaction was agreed upon or at the time of the preparation of the original documents.

THE COURT: You heard it from whom?

THE WITNESS: I heard it from either Mr. Pistell or Mr. Murphy, my partner, or possibly from the attorneys at Willkie, Farr who I talked to, your Honor.

Q Would it be fair to say Mr.Pistell gave you the broad outlines and left it to the attorneys in New York to work out the deals?

A He didn't give me the broad outlines. He may have given my partner or Carson, Lawson the broad outlines.

Q You did not receive any instructions directly?

A As I already indicated, this agreement was in draft form when it was handed to me and I proceeded to discuss the terms with the attorneys for Willkie, Farr.

My main concern about this whole transaction was the tax affect or consequences and the only lesser consideration was because the law firm in the Bahamas has been involved in the preparation of this document.

Prima facie, I assumed this was a valid form of preferred shares under Bahamian law.

Q You exchanged drafts in New York City with Willkie, Farr, is that correct?

A That is my recollection, yes.

Q You referred to a desire to see that Vencap was not engaged in business in New York; do you recall that?

A Yes.

Q In the United States, generally, is that correct?

A Yes.

Q Would it be fair to say, since you are the individual who has furnished the records to it, the Vencap records to the SEC, that those records contain literally hundreds of documents addressed to Vencap at 99 Park Avenue?

A You say addressed to Vencap at 99 Park Avenue. I think you again are characterizing the evidence which was turned over to the SEC, Mr. Anderson. As Mr. Pistell has

testified fully and completely before the SEC, the arrangement basically for the benefit of the accountants so they could make sure that the books were up to date was that on all stock transactions, for example, there were duplicate copies of transactions sent to New York so there wasn't the delay that was involve in case -- the accountants, after all were here in the country, Long Island, so we did make an arrangement and as to foreign bank accounts --

THE COURT: The question Mr. TAylor was, did you turn over documents to the SEC and the way Mr. Anderson put it, literally hundreds; did you turn over documents to the SEC which were letters addressed to Vencap at 99 Park Avenue?

THE WITNESS: I don't know that they necessarily were addressed to Vencap --

THE COURT: The answer is "yes"?

THE WITNESS: Yes, we did turn over some documents addressed to Vencap.

THE COURT: What does Vencap have at 99 Park Avenue?

THE WITNESS: It has space at 99 Park Avenue which can be used as we have space availalbe for anyother client. We allow our clients --

THE COURT: Does it have its name on a door or on the building directly?

THE WITNESS: No.

THE COURT: Does Intercapital or Intervent?

THEWITNESS: No.

THE COURT: Neither Intervent nor Intercapital nor Vencap have a name on it directly.

THE WITNESS: As is customery with many of our clients, we have copies or confirmations or things that come to our attention. This is a matter of convenience. We could have just as well had this arrangement through the Feild, Tiger firm also.

Q And the Field, Tiger firm is also in the United States?

A Yes.

Q Do you recall Mr. Glavin stating that Vencap paid rent at 99 Park Avenue?

A I don't recall him stating that but he may have said so.

THE COURT: Is it true?

THE WITNESS: I think Vencap has in effect paid some rent. I think that would be an accurate characterization, your Honor.

It is not denominated as rent. That is not an inaccurate characterization.

Q Within the group of documents you furnished to the

SEC, are there a substantial number addressed to Intercapital care of Havens, Wandless at 99 Park Avenue?

A Yes, there are and bank statements of the Bank of Commerce.

Q Would your answer be the same but to a lesser extent with respect to Intervent?

A Well, I think so.

Q Does Conservative Capital get mail at 99 Park Avenue?

A I think I can say -- I can't recall having seen any mail that has come to that address.

THE COURT: Mr. Anderson, unles you are going to finish in the next minute or two, I think we will adjourn at this time.

MR. ANDERSON: I think this will be a convenient place to break, your Honor.

THE COURT: Ten o'clock tomorrow morning.

(Adjourned to May 19, 1974 at 10:00 a.m.)

ITT, an International Investment Trust, et al.

v. 74 Civ. 2504

Vencap, Ltd, et al.

June 19, 1974
10:00 A.M.

(Trial resumed)

MR. KELLNER: Your Honor, before we begin, Exhibit 30 which we introduced yesterday is a schedule of the Vencap monthly security transactions. We found a mathematical error in the last column on the bottom. The average outstanding investment from September '72 to April '74, we have given a corrected copy to counsel for defendants yesterday and we would like to substitute this corrected copy for the exhibit now in evidence.

THE COURT: What is the error?

MR. KELLNER: The original had a monthly average outstanding investment of $1,379,158.32. It should be $1,022,199.69.

In addition, your Honor, we would like to introduce as I believe Exhibit 33, the list of Vencap securities stock transactions that were taken from Exhibit 14-19.

Again, your Honor, counsel for the defendant

has been provided a copy of this yesterday.

THE COURT: I take it this is just a summarization or reworking of 14-19.

MR. KELLNER: Yes, your Honor. What it is doing is placing buys and sells for each transaction.

THE COURT: I found that in dealing with 14-19, I would run down the list of names and try to match them. This does it for me.

MR. ORAM: I have no objection to it, your Honor. I would point out, however, that 14-19 does not on excluding the letter page, on page 3 characterize realized profit and realized loss, so this is not really, as the exhibit does, it is not really a summary. It is an addition to 14-19.

14-19 when speaking of the Out-Island Airways, it merely says bought and sold with a footnote of 6,000 shares of Turks & Caicos Airways being received upon the sale and there is an additional paragraph in the new Exhibit Plaintiffs' 33 that talks about realized profit and realized loss. I think it characterizes it a little.

THE COURT: Yes, I see that.

What is realized profit and realized loss, what does it mean?

MR. KELLNER: We believe that it means when

the stock is bought then subsequently sold --

THE COURT: I know, but does that have a special significance here in terms of any of the agreements or is this just your label?

MR. KELLNER: It is just our label and these are solely on completed transactions where there has been a buy and sell.

THE COURT: I take it really what you are saying is, if I take the first transaction HCA Industries, it was bought at $73,000 and sold at $81,000-odd. When you say realized profit, all you mean is the difference between those two figures.

MR. KELLNER: Yes, your Honor.

THE COURT: So it has no special legal significance.

MR. KELLNER: No, your Honor.

THE COURT: It is just the difference between figures.

MR. KELLNER: Yes. The reason we used the term realized profit, if your Honor will turn to page 5 of the exhibit, there we use the term unrealized profit and unrealized loss. What we have done there, your Honor --

THE COURT: What does that mean?

MR. KELLNER: This means that the stock, we

believe, is still in the inventory of Vencap and we have taken the present value as best as we can determine, the present value of the various securities that are listed and determined if the stock was sold today, what would be the profit or loss.

MR. ORAM: May I have the date on which these computations were made? It says from September to April 30. Was the unrealized loss or profit determined as at that April 30?

MR. KELLNER: No. This was determined, I believe on Friday.

MR. ANDERSON: From the Donovan testimony.

THE COURT: I take it I can understand that on page 5 the unrealized profit and unrealized loss again, those words have no special significance. They are just mathematical computations.

MR. KELLNER: That is correct.

I would also like to add that the second listing on the securities inventory, 50,000 shares of Lonhro, has no current market price.

THE COURT: Of what?

MR. KELLNER: Lonhro. The second security.

THE COURT: I don't think I know anything about Lonhro.

MR. KELLNER: We believe this is also held in the inventory of Vencap.

THE COURT: I have seen the name.

MR. KELLNER: The price of that stock has not been introduced into the record.

MR. ORAM: Your Honor, I still have a little difficulty on page 5, the statement "Total unrealized profit September '72 to April 30, 1974 and I think I understand that the computations were made as a price or stock value sometime around June 18, is that correct?

MR. KELLNER: Yes, that is correct.

MR. ORAM: Then the label is incorrect. If the value was determined sometime the middle of June, it is not an unrealized profit or loss as of April 30.

THE COURT: I think the footnote, while interesting, is not property for this kind of an exhibit. The footnote relates what a witness testified about as of a prior date in a not specific way.

I take it these documents are supposed to be specific. I don't know whether we need to change the footnote, Mr. Oram. I understand what it is about. I think if I were doing this I wouldn't have included that footnote, but there it is. If somebody thinks they ought to retype this page and leave out the footnote and talk

ate, but I wonder whether we need to bother.

KELLNER: I would also like to add one One page 6, the schedule of Vencap Limited nts. This came as the note says, from and 14-35 and 14-4A.

COURT: I wonder why you raised that.

KELLNER: I originally said it was from ed to make clear it was from other exhibits

would also like to introduce, your Honor, n that was on the blackboard during Mr. imony. The figures used in the example d Mr. Morse.

ANDERSON: That is the corrected number,

COURT: All right.

aintiffs' Exhibit 33 and Exhibit 34 were in evidence)

KELLNER: In addition, your Honor, I hand up pursuant to the stipulation entered ounsel for the defense and counsel for the plaintiffs' designation of testimony of the various hearings and the hearing on junction, the testimony before the SEC prior

rkjw

to that preliminary he
at the deposition in t
Again, Mr.
MR. ORAM:
THE COURT:
of May 6?
MR. KELLNER
evidence and I believe
deposition is 14. The
injunction --
THE COURT:
whether I ought to hav
but my question is, do
MR. KELLNER
THE COURT:
Fullerton, my law cler
of it and if I don't,
MR. KELLNER
MR. ANDERSO
resume the stand.

D A V I D G .

the stand, having
further as follow

aring and Mr. Pistell's testimony
he same 5001 case, as it is called.
Oram has a copy of that.
That is correct.
Do I have a copy of the deposition

R: That has been introduced in
it is Exhibit 14, your Honor. The
hearing prior to the preliminary

I understand. My question is not
ve a copy, which I assum I should,
I have a copy?
R: I don't believe so.
Could you undertake to call Mr.
rk and find out if I have a copy
you will supply him with a copy.
R: Absolutely, your Honor.
ON: Mr. Taylor, would you please

T A Y L O R , resumed
been previously sworn, testified
ws:

CROSS EXAMINATION (Continuing)

BY MR. ANDERSON:

Q Mr. Taylor, I want to be sure that the copies of Exhibits 10 and 11 cover all of the proceedings of the stockholders and directors of Vencap.

A I would be happy to look at this and examine it and compare it with the original.

Q Did you bring the originals today?

A I think we have the originals here, yes.

Q Let me suggest this: If by the end of the luncheon break assume we go that long, you do not inform the Court of inaccuracies or omissions --

THE COURT: Mr. Taylor, have you compared these?

THE WITNESS: I haven't had an opportunity to do so, your Honor. I can certainly do that during the luncheon break.

Q Mr. Taylor, in connection with the affidavit which you filed in opposition to this application dated June 13, 1974, you refer to the United States Securities Laws.

Do you recall that?

A If you will give me a copy of the affidavit.

Q You don't remember independently referring in

your affidavit to the United States Securities Laws?

A I remember some reference. I don't remember in what context.

Q So there was a reference in your affidavit to securities laws?

A I think that is correct.

Q Very briefly, what familiarity do you have with the United States Securities Laws?

A Well, I have had experience for, I would say, about ten years with the United States Securities Laws, both in connection with public and private offerings of stock, experience with foreign offerings outside of the United States, experience in connection with advice with respect to clients regarding United States Securities Laws and with foreign securities laws.

Q Are you familiar with the concept of direct or indirect ownership of securities?

A Absolutely, as it is used under the various different meanings for that depending whether you are talking about direct or indirect beneficial ownership fund United States Securities Laws, I am.

Q Applying the second of direct or indirect ownership, did you own any securities not shown on the chart here?

MR. ORAM: Your Honor, this line of questioning

was prefaced by determining Mr. Taylor's expertise on United States Securities Laws. I don't think this has anything to do with this case.

THE COURT: I agree with that.

It seems to me Mr. Anderson your question is a little broad. Mr. Pistell may own stock in General Motors and the witness doesn't necessarily know about that. I take it what you mean is does he have any interest in these companies.

Q Using the concept of direct or indirect ownership, does Mr. Pistell own more than five percent of any company other than those listed on the blackboard?

MR. ORAM: I object. I fail to see the relevance of that question.

THE COURT: I am not sure I do either, Mr. Oram.

I would like to know, Mr. Anderson, what you have in mind. Perhaps you and Mr. Taylor have the same thing in mind but I am not sure what you are talking about when you say direct and indirect.

Could you develop that for me either by an assertion by yourself or asking the witness?

Q Mr. Taylor, what does direct ownership of securities mean?

A That is -- I regard that as legal ownership meaning you have title in your own name, or you could obviously have it in nominee name but I am assuming that is the same as direct ownership.

Q What is direct ownership?

A That would be where you own shares of one company which in turn owns shares of another company and you are tracing. If you want to take an example on your blackboard here. I think what you mean by indirect, Mr. Pistell owns 50 percent of the ordinary shares of Vencap and Vencap owns 100 percent of the ordinary shares of Intervent. Indirectly you could argue that Mr. Pistell owns 50 percent of the common stock of Intervent. I think that is what you mean by indirect ownership.

THE COURT: Is that what you mean by direct and indirect?

MR. ANDERSON: Yes, your Honor.

THE COURT: In other words, if I have five shares of stock in General Motors and General Motors owns the X company, that I am therefore an indirect owner of stock in the X company.

MR. ANDERSON: That is correct, your Honor.

THE COURT: You mentioned five percent. What is the significance of that?

MR. ANDERSON: The five percent, your Honor, was to eliminate any holdings that Mr. Pistell may have in General Motors because I think we will concede that if he owns stock in General Motors, he does not own more than five percent of the stock.

THE COURT: I don't know whether we ought to make that concession or not.

I see, the five percent was not an SEC figure. It was just to try to eliminate the area of questioning.

MR. ANDERSON: Specifically, your Honor, the reason for the five percent is, he does own approximately five percent of Flag Redfern.

MR. PISTELL: I don't.

THE COURT: But it wasn't an SEC rule?

MR. ANDERSON: No, your Honor.

Q Mr. Taylor, what is the concept beneficial ownership under the U.S. Securities Laws?

A Beneficial ownership has different meanings in different context. If you are referring to reporting requirement, beneficial ownership will include shares whether it is held by your wife or some relative, shares to which you are in fact the real owner. It may under certain circumstances include shares which you really don't have the incidence, I say, of ownership but for purposes

of attribution, you are deemed to own those shares, so you may be deemed to ownethe shares of your children.

Q Using all three of those concepts, direct ownership, indirect ownership and beneficial ownership, can you give us the names of the companies, if any, in which Mr. Pistell has more than five percent ownership?

MR. ORAM: Again I must object on the ground of relevance, unless we are talking about the companies that are here in issue.

THE COURT: Overruled.

A I can do this to the best of my knowledge. Obviously you have the witness available who can testify directly with knowledge, but I will testify as to my knowledge based on what I know and I would say that Mr. Pistell owns more than five percent, I think that is the way you phrased the question, directly or indirectly.

Q And beneficially?

A And beneficially, of Intercapital, Sangin, Vencap, Intervent, Chibex, Conservative Capital and to my knowledge, it is not true of Flag Redfern.

Q Are there any other companies --

THE COURT: I am sorry, I didn't hear the last few words.

THE WITNESS: To the best of my knowledge, it is

not correct with respect to Flag Redfern.

THE COURT: Is it because you do not know or you know he doesn't?

THE WITNESS: On information and belief, I have asked Mr. Pistell that question --

THE COURT: I just want to know what you know or what you don't know, and you don't know.

THE WITNESS: I don't know directly.

Q If the deposition testimony of Mr. Pistell indicates that he owns about five percent, does that mean there has been a change in Flag Redfern ownership since May of this year, or that the five percent figure is wrong?

A I don't know that it is even close. You seem to think it is close to five percent.

THE COURT: Why did you know about Flag Redfern?

THE WITNESS: The only reason I might know about it, Mr. Pistell and Intervent, Intervent particularly, was in a sense a partner of Flag Redfern when they acquired these oil and gas --

THE COURT: Did you work on the matter?

THE WITNESS: Yes, and I met these people.

THE COURT: Then you ought to know who the stock-

holders are.

THE WITNESS: I know who the principal stockholders are of that company. Mr. Pistell -- the controlling stockholders are people in Texas that I have met. They own almost all of the stock of this company. Mr. Pistell and a number of other people are, if you will, minority shareholders.

THE COURT: Do you know how much he owns of the company?

THE WITNESS: He owns approximately 44,000 shares and there was a split recently.

THE COURT: Is that more or less than five percent?

THE WITNESS: I don't know, your Honor, I think it is less, but if someone -- there is an exhibit here that has the capitalization. We could refer to that.

Q Are you perfectly clear that it is less than ten percent?

A Definitely.

Q So I am clear about your testimony, other than the companies that you have just mentioned, to the best of your knowledge Mr. Pistell is not direct, indirect or beneficial owner of more than five percent of the stock of any company, is that correct?

A That is correct.

Q Do you include in indirect ownership securities held by his wife?

A I have to state this: I have no knowledge of his wife's portfolio of securities because his wife is represented by independent counsel. We aren't counsel for Mrs. Pistell. She is independently wealthy and she has an investment advisor. I would have to qualify, I suppose, my answer by saying I have no knowledge or no basis for inquiring or knowing what her portfolio consists of.

THE COURT: Apart from the securities or investments or holdings which Mr. Pistell's wife may have, do you believe that you know all of the investments that Mr. Pistell holds?

THE WITNESS: I think I know all of the investments he holds certainly in this context.

THE COURT: That is a different question.

THE WITNESS: I don't think I can say that I know what he may hold such as all of General Motors or other portfolio investments.

THE COURT: Has he ever told you "This is all I have"?

THE WITNESS: No.

THE COURT: What you know about is what you know about as a result of your relationship with him as a lawyer?

THE WITNESS: That is correct.

THE COURT: Things he has come to you for advice about?

THE WITNESS: That is correct, your Honor.

THE COURT: As far as you know, it is entirely conceivable in connection with that relationship, he might have other investments you know nothing about?

THE WITNESS: It is possible.

THE COURT: It is more than likely?

THE WITNESS: It is just something you don't know about.

THE WITNESS: That is correct, your Honor.

Q I want to ask a question I believe is proper and in order to avoid any problem with attorney-client privilege, I would like to have you give a yes or no answer.

Have you been involved in the preparation of federal income tax returns for Mr. Pistell?

A The answer to that is, no.

Q Do you have any knowledge of Mr. Blackman's securities holdings other than in Conservative Capital, Vencap

and Intercapital?

A None whatsoever. We do not represent Mr. Blackman and I would have no knowledge.

Q Do you represent Mr. Pistell personally?

A Our firm represents Mr. Pistell personally.

Q I believe you testified on direct that Intervent made $200,000 on some oil and gas leases, do you recall that testimony?

A That is correct.

Q Where did Intervent get the money to invest in those oil and gas leases?

A You mean where is the physical source of the funds or the ultimate source?

Q Did part of the funds that Intervent used to buy those oil and gas leases come from Vencap?

A I regard all of the funds as having come from Vencap. It happens to be, for tax purposes, the funds were split. $200,000 were invested directly into Vencap and the balance, approximately $7,000 was invested by the method that was outlined in detail before, a deposit in a Swiss bank followed by a loan to Intercapital followed by a loan from Intercapital to Intervent.

Q In common parlance, that was Vencap's money?

A Absolutely.

Q And Vencap's money was used to buy oil and gas leases from Flag Redfern, is that correct?

A That is correct. That is correct as a technical matter, Mr. Anderson.

THE COURT: I understand, Mr. Taylor.

Q Maybe we should have it correctly stated.

The oil and gas properties were bought from Mr. Bentliff, is that correct?

A The arrangement was --

THE COURT: Why do we care who they were bought from?

MR. ANDERSON: Your Honor, I think it is important to know.

THE COURT: Is it important to know who the seller was?

MR. ANDERSON: Yes, your Honor.

THE COURT: All right.

Q Who was the seller?

A As far as the contracts were concerned, the assignments, the assignments came from Flag Redfern but Flag Redfern, all they did was reassign, if you will, with one minor exception where they couldn't reassign for reason of technicality. They reassigned on another pro rata basis. They technically acquired 100 percent

and the reasons were entirely technical but the overall intention, and one fact that was accomplished, Mr. Pistell bought approximately 40 percent and they bought approximately 60 percent of these properties that were owned by Mr. [illegible]ntliff in Houston, Texas.

THE COURT: Mr. Anderson, just to keep me current, I am not sure what you are getting at. I gather you are trying to establish that Vencap, through these various subsidiaries bought some oil and gas leases.

My question is, so what?

MR. ANDERSON: Your Honor, I think the so what is the self-dealing here.

THE COURT: Self-dealing between Vencap and Intervent?

MR. ANDERSON: No, your Honor, with other companies in which Mr. Pistell has an interest.

THE COURT: I still don't see the so what. Let's assume that all of the companies on the blackboard, let's even assume for the sake of argument that Flag Redfern is in the same posture, although I guess there is a large question about that; let's assume that they are all Pistell companies and they deal with each other.

I am not quite sure how that relates to the issues we have here.

MR. ANDERSON: One of them, Vencap, certainly should be a company at which arms length dealing was called for.

Let me ask one more question and I think I will be finished with Flag Redfern.

THE COURT: Vencap is what we are talking about and Vencap's relationship with IIT.

What difference does it make whether it is Vencap or one of the related companies, which are all, it seems to me, pretty clearly, a part of the same family. I don't know what conclusion I will reach about this ultimately, but suppose I conclude and I suppose there is some reason I ought to conclude that Mr. Pistell recalls this group of five or six companies. You wind up with Vencap on the one cap plus the other companies and on the other hand, IIT.

I am wondering what the significance is because I think I am missing it, that one of these companies has entered into an oil and gas lease arrangement.

You said you had another question. I just wanted to let you know I am puzzled so you can focus on this.

Q Could you identify Mr. Bentliff and state his relationship with Flag Redfern?

A He has absolutely no relationship with Flag Redfern. He is an independent oil and gas producer and has interests all over the world. He is a man of great substance and wealth.

Q In connection with this $200,000 profit, do you recall after that profit was received by Intervent, that your firm charged two legal fees to Intervent, one in the amount of approximately $66,000 and one in the amount of approximately $7,500?

A That is quite possible.

Q So that the profit, of course, would be less your legal fees, is that correct?

A I think that is correct.

Q And Mr. Pistell on his deposition testified that the profit was approximately $125,000; is that correct?

A I think there is an estimate of the profit that has been put in there after net of taxes and expenses of the transaction which the accountants --

THE COURT: The question was, Mr. Taylor, and I hate to suggest this, but I think we could move along a lot faster if you would answer the question.

The question was, Mr. Pistell testified that the profit was $125,000. The answer to that question is

simple, either yes or no.

THE WITNESS: Yes.

Q After that so-called $200,000 profit, Intervent loaned $55,000 to Mr. Pistell, is that correct?

A I think that was before this transaction was completed or the sale was completed, Mr. Anderson.

THE COURT: The answer should have been "no".

Q Did there come a time when Intervent loaned $55,000 to Mr. Pistell?

A Yes.

Q I believe you testified yesterday that Mr. Pistell had promised to secure that $55,000 loan by a mortgage on his house in the Bahamas.

A There is an agreement to that effect.

Q He has not yet executed a mortgage, is that correct?

A He hasn't executed a mortgage but he has committed himself to do so.

THE COURT: He has committed himself?

THE WITNESS: He signed a contract that he will.

Q Do you know whether or not he is the sole owner?

A To my knowledge he is.

Q I believe you also testified that you believed that house was worth approximately $150,000.

A I don't think I testified. I think I testified it was worth more than that.

Q I stand corrected.

A Once again you are asking me for my opinions and I am willing to give them within limits.

Q Yesterday we referred to the security on the Vencap CD with Handleskredit which supported a loan to Intercapital then the loan to Mr. Pistell and I ask you if you recall during Mr. Pistell's deposition on May 7 at page 204, Mr. Pistell was asked by Mr. Kushner:

"Q Now, what collateral does Vencap have for the loan it made to Intercapital or didn't it make a loan to Intercapital?

"A Yes, it had -- no.

"MR. LANZOTI: There were advances.

"A There was no collateral, it was just an agreement loan."

Do you recall Mr. Pistell being asked those questions and giving those answers?

A Yes.

Q And I think you agreed yesterday that Vencap does not have any actual security, it simply has a promise

from Handelskredit Bank to turn over any security that the bank has left after it collects, is that correct?

A I didn't so testify. I think that is a characterization, Mr. Anderson.

Q How would you correctly characterize your testimony?

A I think that I have testified yesterday, and I think if you can ask a question here I will attempt to answer it.

Q Is it correct that what Vencap has is a promise from a Swiss bank that nobody has ever heard of?

MR. ORAM: Could we strike that characterization unless Mr. Anderson intends to prove that statement?

MR. ANDERSON: I will withdraw the question.

Q Is the security that Vencap has --

A One moment. I think the effect of your statement on the record, Mr. Anderson --

THE COURT: Mr. Taylor, your function is to answer questions.

Q Is Vencap security a promise from, or a written agreement from Handelskredit Bank?

A That is correct, Mr. Anderson.

Q Would you please refer to the articles which are contained in Exhibit 10, particularly page 14, para-

graph 56.

I ask you whether or not that provides a director of Vencap who is interested in a transaction as to disclose that interest to his fellow directors at the time the board passes on the transaction.

A It is generally what it says.

THE COURT: What is the usefulness of finding out what Mr. Taylor thinks that means?

MR. ANDERSON: Mr. Raylor is an officer, the assistant secretary of this company.

THE WITNESS: I think you should correct that. I am an assistant secretary. You said "the".

THE COURT: I think if we are going to be correct, we should say an assistant secretary.

MR. ANDERSON: I meant to say that.

THE COURT: I am still wondering why it is of interest to me to know what anybody thinks about the language. The language says what it says.

MR. ANDERSON: That was strictly a preliminary question.

Q Would you refer --

THE COURT: I don't think we got an answer to your question.

A I think yes, sir.

Q Would you refer to the minutes of a directors' meeting on May 13, 1973.

THE COURT: By the way, who are the other assistant secretaries?

THE WITNESS: Mr. Lawson is a member of Carson, Lawson is an assistant secretary. Until recently, Mr. Wadel who has left that firm was an assistant secretary, your Honor.

THE COURT: Are there other assistant secretaries at this moment?

THE WITNESS: At the moment Mr. Lawson and myself are the two assistant secretaries.

THE COURT: Mr. Lawson is still an assistant secretary?

THE WITNESS: Yes, your Honor.

A I am having difficulty. You are referring to a May 13 meeting.

Q May 31, I am sorry.

A I don't see May 31. I see a May 21.

Q Is there a meeting at which Mr. Blackman's employment contract was approved?

A The meeting is dated the 21st day of May, not the 13th or the 31st and I see Mr. Blackman's appointment.

Q I ask you if at that meeting the directors approved Mr. Blackman's employment contract, Mr. Blackman's acquisition of the shares, his shares in Vencap, an employment contract with Mr. Pistell, a letter agreement regarding the $150,000 San Christobol fee, an operation agreement regarding Executive Capital and a loan of $150,000 to Turks & Caicos Airlines.

A That is correct.

Q Do those minutes reflect that the interested directors abstained from participation in the votes on those matters in which they were interested?

A It states that Mr. Pistell abstaining, the proposed agreements between Pistell and the company were authorized and approved.

Q Mr. Blackman was not then a director, is that correct?

A It recites that Mr. Blackman was a director. It recites there were four directors.

Q Did Mr. Blackman abstain from the approval of his employment contract?

A It states that he abstained.

Q And Mr. Pistell abstained from the approval of his employment contract?

A That is correct.

Q And Mr. Pistell abstained from the consideration of the $150,000 San Christobol fee, is that correct?

A That is correct.

Q The action with respect to the $150,000 San Christobol fee was proposed by Mr. Blackman, is that correct?

A That is what is stated.

THE COURT: Do you have another copy of that?

MR. ANDERSON: I don't think we do, your Honor.

THE COURT: I don't see any reference to San Christobol.

MR. ANDERSON: It is the $150,000 fee that is mentioned. It does not use the word San Christobol in the document.

THE COURT: It says Turks & Caicos Airlines Limited.

MR. ANDERSON: That is a separate item. It is earlier in the paragraph relating to Mr. Pistell's employment contract.

THE COURT: It doesn't say $150,000. It just says a fee that was paid to the company.

MR. ANDERSON: The exhibit to those minutes

does refer to $150,000. There are three exhibits. An employment contract for Mr. Blackman, employment contract for Mr. Pistell and a document relating to the fee.

THE COURT: What I am interested in trying to find is a document that shows me this was San Christobol. Is there such a document?

MR. ANDERSON: I believe the witness will testify that is the San Christobol fee.

THE WITNESS: That is the $100,000 of the $150,000 San Christobol fee.

Q The letter attached to the exhibit Judge Stewart is reading has the figure $150,000 in it.

Is that the total amount of the San Christobol fee?

A That is my understanding, yes.

THE COURT: The letter says -- I guess now I have it. I take it this is the letter which says this letter will serve to confirm our agreement with respect to the fee of $150,000 which was paid into the company to facilitate the organization and initial funding of the company.

Then it goes on in paragraph number 1 to say the company will pay you $100,000.

Is that what we are talking about?

MR. ANDERSON: Yes.

THE COURT: I am at a loss to know how San Christobol gets into that.

Q Mr. Taylor, is it your understanding that the $150,00 fee referred to in the letter from which his Honor has just read, is the fee received by Mr. Pistell in connection with the San Christobol transaction?

A Yes.

THE COURT: I am still puzzled. What does that have to do with Vencap?

MR. ANDERSON: Your Honor, what that has to do with Vencap is simply that in August 1972, $150,000 was put into Vencap. In October 1972, IIT invested $3 million in Vencap and on May 21, 1973, the $100,000 is pulled out, and there is not a piece of evidence in the record to show that that $150,000 was a loan to Mr. Pistell until six or seven months after our client had made its investments.

MR. ORAM: I don't think anywhere in the record it characterizes that $150,000 as a loan to Mr. Pistell. Six months later, a year later or any time later.

MR. ANDERSON: A loan from Mr. Pistell to Vencap, which is what it is attempted to be turned into

by the documents to which you just referred.

THE COURT: At the moment I am frankly puzzled. I don't see in fact how this all fits together into a Vencap picture. I assume that counsel will at least try to educate me further in the future. I don't think we ought to stop right now.

Q Referring again to Exhibit 11, Mr. Taylor, is there any record in the director's minutes of Vencap other than the one to which we just referred which disclosed the interests of the Vencap directors in any transactions between Vencap and companies in which the directors are interested?

A Could you restate that or rephrase that question.

MR. ANDERSON : Could you read the question back.

(Question read)

A I think the thrust of your question is, is there anything relating in here to Intercapital and I see --

THE COURT: Why don't you take his question at value. Is there or is there not?

A Yes.

Q Would you show me the reference, please?

A I see a reference here to an executive committee meeting, for example.

Q What was the date of the meeting?

A October 31, 1973.

Q What transpired at that meeting?

A This was apparently in connection with a proposed oil and gas investment. It states that the company should establish a wholly-owned Delaware subsidiary; that they should invest $200,000 as capital, that a banking loan ought to be arranged, et cetera.

Q Do the minutes of that meeting disclose that Mr. Pistell had a personal interest in the other side of the oil and gas transactions?

A It makes no such disclosure.

Q The transaction to which you refer was the participation in the Flag Redfern oil and gas leases, is that correct?

Q And one of the parties to that transaction was Flag Redfern?

A One of the parties was Flag Redfern.

Q Going back to the bank question here, other than those at that May 21st meeting, is there any disclosure in the directors' minutes that Mr. Pistell was engaging in transactions on behalfof Vencap with companies

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in which he had an interest?

Did he disclose his personal interest in the transactions with Conservative Capital?

A If you mean do the minutes recite that he made such disclosure, the answer is no.

Q Do the minutes recite --

THE COURT: Do you mean by that, Mr. Taylor, or are you suggesting that the minutes didn't need to because of the fact his interest was known to the directors and officers?

THE WITNESS: They were both Mr. Blackman and Mr. Pistell, the two stockholders and the directors were the same.

Yes, your Honor.

Q Are you testifying that Mr. Carson who is also a director knows of Mr. Pistell's interest in Conservative Capital?

A Absolutely.

Q Does Mr. Carson know of Mr. Pistell's interest in Chibex?

A I am certain that he does. Incidentally, you have the wrong side, but that is all right, it is Mr. Lawson.

Q Mr. Lawson is a director of Vencap?

THE COURT: Mr. Anderson, are you suggesting in a closely held organization of this sort that minutes are important, that facts that are known to the officers and directors are something that has to be reflected in the minutes? I am not sure what you are getting at.

The minutes obviously don't record that Mr. Pistell had an interest in Chibex. Is that to you a significant fact?

MR. ANDERSON: Yes, your Honor, it is a significant fact, actually when compared to the action taken on his employment contract where the minutes carefully recite that it was his agreement with him and therefore he would abstain from the participation on that contract.

THE COURT: It may be that you are right. On the other hand if you have a very small group of people like this who own five or six companies and everybody knows what everybody else knows, it is important as a matter of form that each of these facts be recited when matters are dealt with officially? I suppose it could be.

MR. ANDERSON: Your Honor, definitely my position as a general matter would be that where facts are generally known to the individuals involved, that they

would not need to recite in every board of directors meeting just exactly what every interest was.

I think that we have here, particularly in the transactions between Vencap and Conservative Capital or Vencap and Chibex two of the three directors who are interested.

THE COURT: Yes, I would suppose certainly if you were going to do this to the Queen's taste, the relationships that Mr. Pistell and Mr. Blackman had with each company should have been spelled out in the minutes. I am not clear who was hurt by the failure to spell it out.

Look, I don't want to debate this now.

MR. ANDERSON: Thank you, your Honor.

Q Did there come a time when Vencap received an option from Conservative Capital to purchase 75,000 shares of Chibex stock?

A Yes.

Q Do the minutes reflect whether or not at the time that option was transferred from Vencap to Intercapital, the interest of Mr. Pistell and Mr. Blackman and Intercapital were disclosed?

A No.

Q To your knowledge, did Mr. Carson know and

approve of that transfer?

THE COURT: How about Mr. Lawson?

A Would you get the name correctly.

Q Mr. Lawson?

A I would say, no.

Q Did there come a time when Vencap loaned $75,000 to Conservative Capital?

A Yes.

Q Did Mr. Lawson approve of that loan?

A Yes. That is reflected in your meeting of the 21st.

Q Was the interest of Mr. Pistell and Mr. Blackman in Conservative Capital reflected or disclosed in the minutes of the May 21st meeting?

A No.

Q Is it your testimony that notwithstanding its omission from those minutes, that Mr. Lawson of their interests?

A Yes.

THE COURT: How do you know that?

THE WITNESS: As counsel acting for the company, your Honor, he incorporated both of these companies and they maintained the share register, et cetera.

THE COURT: You knew that you knew but how do you know that Mr. Lawson knew?

THE WITNESS: I haven't asked Mr. Lawson, but I am certain that he knew.

THE COURT: Why would he know?

THE WITNESS: He was a director, your Honor.

THE COURT: A director of?

THE WITNESS: Both companies, both Conservative Capital and Vencap.

THE COURT: Was he a stockholder in both companies?

THE WITNESS: Not other than perhaps a qualifying share, your Honor.

THE COURT: Did he have a position as an officer?

THE WITNESS: Yes. He was vice-president and assistant secretary.

THE COURT: I guess what you are telling me is, he must have known but you can't tell me one hundred percent for sure that he did know.

THE WITNESS: That is correct, your Honor.

THE COURT: Mr. Anderson, we will take a short break.

(Recess)

BY MR. ANDERSON:

Q Mr. Taylor, did there come a time that $605,000 of Vencap's funds were loaned by Intercapital NV to Chibex?

A There is no loan by Intercapital with Chibex in that amount. There was a short term loan, but not in that amount.

Q What was the short term loan?

A The short term loan occurred at the time of a first public financing of Chibex.

Q How much was that loan?

A I think it was in the amount of about $400,000.

Q Is there any record in the minutes of the proceedings of the directors of Vencap that the interests of Mr. Blackman and Mr. Pistell in Chibex were disclosed at the time of that loan?

A No.

Q I take it that Mr. Lawson is not the attorney for Intercapital NV, is that correct?

A That is correct.

Q At the time Vencap's $400,000 was loaned to Chibex, did Mr. Lawson approve that transaction?

A No.

Q Was there a recent loan in the amount of

approximately $80,000 of Vencap's funds through Intercapital NV to Chibex?

A Not to my knowledge.

Q Do the records reflect -- you do not know of any such loan?

A I am sorry, if you say recent within the last two or three weeks or a month?

Q Shortly prior to Mr. Pistell's deposition in May of this year.

A I don't recall the date. There was a two or three or four day loan, I believe.

Q Do you recall that the amount was approximately $80,000?

A I think that is correct.

Q Do you know whether or not Mr. Lawson knows about that loan?

A I don't think he does.

THE COURT: This was a loan from Intercapital to Chibex.

THE WITNESS: Yes.

THE COURT: And you say it was a two or three day loan?

THE WITNESS: Yes.

THE COURT: Was it repaid?

THE WITNESS: Yes, it was.

Q The funds with which to make that loan came from Venvap, is that correct?

A It didn't come directly from Vencap. It came from Intercapital.

THE COURT: Intercapital doesn't have any funds except what they get from Vencap.

THE WITNESS: That is correct, your Honor. Ultimately the loan emanates directly -- indirectly through Vencap.

THE COURT: Do you know anything about the purpose of that loan?

THE WITNESS: The three or four day loan?

THE COURT: Yes.

THE WITNESS: Yes. There was a firmly private placement by some underwriter and the company needed some funds until the closing date.

THE COURT: Was there any security for the loan?

THE WITNESS: No, your Hono, as far as I know.

THE COURT: Interest?

THE WITNESS: Yes.

Q Are you familiar with the transaction pursuant to which Conservative Capital received $1 million from

the fund of funds?

A Yes.

Q Did you handle that transaction as an attorney?

A I was involved in it along with Carson, Lawson and one of my other partners.

Q Do you recall that in connection with that transaction, fund of funds acquired a put of 500,000 of Chibex stock to Vencap at a dollar a share?

A I recall an agreement that was signed.

THE COURT: I would think the agreement, if there was an agreement, would be the best evidence.

Mr. Taylor, you worked on the advance of fund of funds of $1 million to Conservative Capital?

THE WITNESS: Yes, I did.

THE COURT: Tell me what you know about it?

THE WITNESS: It was a transaction. We worked on the loan agreement, the pledge agreement, various documents with Wilke, Farr. The transaction --

THE COURT: Who initiated the deal, do you know? Don't tell me things you don't know.

THE WITNESS: I don't know who initiated it, your Honor. I can say on the basis of what I have heard.

THE COURT: I don't want to hear about that.

I want to hear what you know.

When you heard about it, there was a deal pending?

THE WITNESS: That is right and I forget whether we were asked.

MR. ORAM: Wilke, Farr called us up. There were a number of points we had. They prepared the loan agreement basically and we then discussed the various terms.

I do recall that this occurred in, I believe, July. It started in June or July and the transaction was completed in early August, your Honor, 1972.

THE COURT: I have a question, then I have a word of caution to you before you answer the question.

Do you know what the purpose for the loan was? You shouldn't answer that question if it is going to get you involved in waiving the attorney-client privilege.

I think you better leave it, Mr. Taylor, thank you.

Q Mr. Taylor, I show you Exhibit 12-296 and ask you whether or not that is a copy of the FOF put to Vencap?

A This is a copy of an agreement dated 29 August, 1972 between Vencap and FOF Proprietary Funds,Geneva,

Switzerland.

Q And you worked on that transaction?

A I did not work on this transaction. I have no knowledge --

THE COURT: Just a moment ago we talked about a transaction. That is a different transaction?

THE WITNESS: Yes, your Honor.

Q Is it your testimony that as far as you know, the put reflected in Exhibit 12-296 is separate and distinct from the FOF investment of a million dollars in Conservative Capital?

MR. ORAM: Your Honor, if I am looking at the right exhibit, I don't see the word "put".

Is this your own characterization?

MR. ANDERSON: I am sorry, that is my characterization. If there is a problem with that, I can ask the witness.

THE COURT: The witness has indicated in the past that if he doesn't understand a question, he can and will ask for an explanation of it.

A The agreement simply says we hereby agree to buy. It doesn't say you have an option.

THE COURT: I don't think, Mr. Oram, that Mr. Anderson can make out of an agreement something it

isn't.

Q Were you familiar with security matters, Mr. Taylor, would it be accurate to reflect, to characterize Exhibit 12-296 as a put?

THE COURT: I think perhaps the witness would be better able to deal with that question, and I certainly would, Mr. Anderson, if you could tell us what you mean by a put.

Q A put is an agreement held by one party pursuant to which that first party can take securities held by that first party and sell them to a second party.

THE COURT: At a specified time and at a specified price?

THE WITNESS: Yes.

MR. ANDERSON: Yes.

Q This happens to be an open-ended put?

THE COURT: By open-ended, do you understand it to be that the seller can require the other parties to buy at this particular point in time if the seller decided upon --

MR. ANDERSON: The agreement says on three days notice and it does not have any termi- cion date as a put might be expected to have.

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THE COURT: It seems to me in light of our discussion, whatever the witness thinks about this may or may not be relevant. I would suppose it is not relevant. The agreement says and does what it does.

May I see it?

MR. ANDERSON: Yes, your Honor.

(Pause.)

THE WITNESS: I don't know whether you would call this a put or whatever you would call it.

THE COURT: It says pretty clearly what the agreement is. Vencap agrees to buy and they agree to buy on three days notice. I don't mean Vencap agrees to buy -- yes, I am sorry, Vencap agrees to buy. The thing I was pausing on how did it happen that FOF Prop had Chibex shares it could sell to Vencap if Vencap called on FOF Prop for these shares. I am up to date.

MR. ANDERSON: I think we have established from the witness that he cannot answer the question you just asked.

Q Is that correct, Mr. Taylor?

A That is correct.

MR. ANDERSON: I think,your Honor, you understand Vencap has to buy pursuant to 296.

THE COURT: Yes, although I am not sure what you mean

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by the words you used, Mr. Anderson, when you say Vencap has to buy. You mean Vencap is the buyer or that Vencap has to buy or do you mean both?

MR. ANDERSON: Vencap at any time must purchase whether or not it wants to do so under that agreement.

THE COURT: This is something I hadn't understood. What do you mean they must purchase?

MR.ANDERSON: The agreement provides that any time they are given notice by FOF Prop, they must take the 500,000.

THE COURT: This is the 3-day notice?

MR. ANDERSON: Yes.

THE COURT: All right, I am with you.

The thing I was wondering about is, suppose Vencap wants to buy without getting the notice, can they do that?

MR. ANDERSON: There is nothing in that agreement giving them the right to.

THE COURT: Thatwould have to be the subject of other negotiations.

MR. ANDERSON: That is in accordance with my understanding.

Q Mr. Taylor, as assitant secretary --

THE COURT: Your point is when FOF Prop decides they

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want Vencap to buy, they could give them 72 hours notice and Vencap has no alternative.

Is there a price on that agreement?

MR. ANDERSON: $1 per share.

THE COURT: Which is the same as the initial price, is that right?

MR. ANDERSON: I don't believe that that is correct.

THE COURT: Where does the one dollar come from? Why one dollar a share?

MR. ANDERSON: Your Honor, I think this was testimony before you at the preliminary hearing that the purpose -- I don't want to characterize that because I don't want to get into what you may or may not conclude from the earlier hearing, but Mr. Graze, according to Mr. Pistell's testimony at the hearing, had Chibex stock at 50 cents a share and he wanted a way to make a guaranteed profit.

This in effect gave him that guarantee and I don't ask you to accept my characterization but I think that explanation may hlep.

Q Mr. Taylor, as assistant secretary of Vencap, do you find anything in the minutes of the meetings of the directors approving the transactions reflected in Exhibit 12-296?

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THE COURT: Can I see it again, please.

A No.

Q I take it it would follow from that, there is no disclosure of Mr. Pistell's interest in that transaction between Vencap and FOF?

A There is no disclosure in the minutes.

THE COURT: Do we know what happened to this? Did this agreement ever get executed? I mean, was the undertaking ever required?

THE WITNESS: Your Honor, Mr. Pistell I believe testified at the SEC hearing that he had advised Mr. Graze that it was foolish or unwise to implement this agreement and that the action was rescinded.

THE COURT: As far as you know, it has never taken place?

THE WINTESS: There have been no steps taken to implement that agreement, to my knowledge.

THE COURT: Have you ever seen anything in writing which rescinds it?

THE WITNESS: No, your Honor.

THE COURT: I am not sure whether this witness can then enlighten me on this, Mr. Anderson. Of course I understand what you tell me is just the statement of a lawyer. The agreement provides for the payment of X dollars or

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$500,000.

You mentioned Mr. Graze's notion there ought to be 50 cents against a dollar payment here. Is that just based on testimony?

MR. ANDERSON: Your Honor, yes that is correct. I believe the testimony at the prior hearing was --

THE COURT: The answer is "yes"?

MR. ANDERSON: Yes.

Q Do you know whether or not Mr. Lawson ever approved of the put reflected -- I am sorry.

THE COURT: I think it is all right, Mr. Anderson, if you want to call it a put. We all know what you are talking about.

Q Did Mr. Lawson approve of the put?

A I don'tknow.

Q You testified that Mr. Pistell advised Mr. Graze against exercising the put, is that correct?

A I testified I was present when Mr. Pistell gave testimony before the SEC as their witness to that effect.

Q I accept that and my question was improper in that regard. Improper and inaccurate.

If one were to assume that Chibex stock was worth 8 or 10 dollars pe share, then it would be in Vencap's best interest to have that put exercised, would it not?

A I would assume so.

Q Mr. Taylor, you testified on direct with respect to the source of the $3 million which ultimately arrived in Vencap's account at BCB in Nassau; do you recall that?

A Yes.

Q Would it be fair to say you do not know where that money came from?

A No. That would not be a correct characterization, Mr. Anderson.

Q Mr. Taylor, aside from the information contained on the credit slip, Exhibit L, do you have any information about the source of the $3 million fund?

A Yes. I think I already testified that I was present --

THE COURT: There comes a point in time, Mr. Taylor, you and I want to finish with this proceeding and I am sure all of us do. I think it is sometimes useful to elaborate on an answer. I think we have reached the point where when you can answer the question "yes" you should say "yes" and when you have to say "no" you should say "no."

A The answer is yes.

Q And you have already given us the extent of your knowledge?

A Yes.

Q Referring to Exhibit 11, the directors' minutes, again on May 21, there are three drafts of documents annexed, an employment contract for Mr. Pistell and an employment contract for Mr. Blackman and an agreement with respect to $100,000 fee.

Do you recognize those documents?

A Yes.

Q Were those documents prepared by your firm?

A Yes, they were.

Q Does Mrs. Pistell have an apartment at 811 Fifth Avenue?

A No.

Q What is the address of her apartment in New York City?

A I think she rents an apartment. It is on East 60th Street.

Q Do you recall making disbursements on behalf of Vencap from Vencap funds to pay all or a portion of the telephone bills with respect to Mrs. Pistell's apartment?

A I don't specifically recall that.

THE COURT: Do you generally recall that?

THE WITNESS: No.

Q Aside from current legal fees, does Mr. Pistell owe your firm any money?

A No.

Q Does Vencap owe your firm any money?

A No.

Q Does Intercapital, N.V. owe your firm money?

A No.

Q Sangin?

A No.

Q Inrervent?

A No.

Q Chibex?

A No.

Q And Mr. Blackman?

A No.

Q I show you Exhibit 12-278 and ask you whether or not that is a document that was prepared by you or one of your partners?

A One of my partners participated in the preparation of this document.

Q Would you identify that partner?

A Charles Murphy.

Q Do you recall Mr. Pistell testifying that Mr. Murphy mailed that document to Mr. Graze in London?

A I believe so.

Q Did Mr. Murphy mail that document to Mr. Graze in

London?

A I don't know.

Q Do you know whether or not a copy of that document was furnished by your firm to Willkie, Farr & Gallagher?

A No.

Q Is there any correspondence in your firm that would indicate whether or not your firm furnished a copy to Mr. Graze in London?

A I don't know.

Q Would your answer be the same with respect to Willkie, Farr?

A Yes.

THE COURT: I just want to be sure that I heard you correctly.

You said Mr. Murphy drafted this?

THE WITNESS: Participated, your Honor.

THE COURT: Participated with whom?

THE WITNESS: Mr. Pistell. I am sure Mr. Pistell asked Mr. Murphy if he would draft it.

THE COURT:I guess Mr. Murphy is going to testify. Perhaps we could leave it until then.

MR.ANDERSON: Would you mark this?

(Plaintiffs' Exhibit 35 was marked for identification.)

Q Mr. Taylor, I show you a copy of Plaintiffs' Exhibit 35 for identification, particularly a portion of that dated or headed Draft DGT September 20, 1972, and I ask you whether or not using that document to refresh your recollection, you recall that you were the principal draftsman of the redemptionprovisions in the redeemable preference stocks?

MR. ORAM: Can you point me to a page in this?

A This would appear to be -- I don't know how you obtained this document, but it would appear to be a draft, probably a draft, a redraft that was sent to Willkie, Farr in regard to the time we were discussing or trying to get the final language for the preferred shares.

I see in the front this is denominated IIT re Vencap Limited correspondence. It says on the front, if this file is given to another attorney, please telephone. I assume this perhaps came from Willkie, Farr. On the front I see John D'Alimonte, etc. I think this is a copy obtained from the files of Willkie, Farr & Gallagher.

MR. ANDERSON: Would you repeat the pending question.

(Read.)

A The answer is, no.

THE COURT: Can I have the question again?

(Question re-read.)

THE COURT: By the answer, you mean it doesn't refresh your recollection or no you were not?

THE WITNESS: I was not the principal draftsman, your Honor.

Q Were you a draftsman of that provision?

A Yes.

Q Refer to the second document in that batch, the second page of Exhibit 35 for identification.

Could you identify that document?

A Well, I can only say what it appears to be because it doens't come from our files, Mr. Anderson. It has Willkie, Farr & Gallagher at the top. It is addressed to re Fell. It says re IIT International Investment Trust and it says it is forwarding a temporary certificate representing 30,000 redeemable preference shares of U.S. 100 each also include a warrant to acquire, etc. It states --

THE COURT: We can all read what it says.

Q As bad as that copy is, do you recognize the signature of John D'Alimonte?

A No, I can't from this copy.

Q Can you recognize the signature of Mr. Fell?

A I have never met Mr. Fell and I wouldn't recognize his signature.

Q Does this document refresh your recollection as to whether or not the 30,000 shares, the certificate for the 30,000 shares and the warrant were delivered to you at the closing -- I am sorry, we delivered at the closing in Nassau.

A I remember that they were delivered.

MR. ANDERSON: Your Honor, I offer as much of 35 for identification as the witness has described.

THE COURT: Do you need it in view of his testimony?

MR. ANDERSON: The DGT draft September 20, 1972, you would like to offer?

MR. ORAM: Has that got a base number on it?

THE COURT: I think it ought to be marked separately.

(Plaintiffs' Exhibit 35-A was received in evidence.)

MR. ANDERSON: I have no further questions of this witness.

THE COURT: Mr. Oram?

MR. ORAM: I have but one question of Mr. Taylor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. ORAM:

Q Mr. Taylor, can you tell us what you know about the Handelskredit page?

A It is a substantial and well known Swiss bank.

Q And you visited that bank?

A Yes.

MR. ORAM: That is all.

THE COURT: Before we break for lunch, I would like to go off the record a moment.

(Discussion off the record.)

(Luncheon recess.)

AFTERNOON SESSION

2:15 p.m.

MR. ORAM: Defendants call Charles Murphy.

C H A R L E S M U R P H Y, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ORAM:

Q Mr. Murphy, where do you reside?

A Mount Kisco, New York.

Q Mr. Murphy, are you the Charles Murphy named as a defendant in this case?

A I am.

Q Are you a partner in the firm of Havens, Wandless, Stitt & Tighe?

A I am.

Q I wonder if you would give to the Court a brief statement of your background and experience?

A As an attorney?

Q As an attorney.

A I was graduated from Columbia Law School in 1948. I spent two years in practice. I was called back in the Marines for approximately two years. I got out in '52 and

went with Texaco's legal staff for two years. I joined Havens, Wandless in September 1954 and became a partner in 1956.

Q Mr. Murphy, as I did before Mr. Taylor began to testify, I reminded him as we are both defendants and counsel for Mr. Pistell and his companies, we may as I ask you questions come into areas of lawyer-client privilege and if we do get to that, I wish you wuld me know so we can deal with them as they arrive.

How long have you known Mr. Pistell?

A Over 15 years.

Q Have you represented him in a variety of matters?

A I have.

Q Have you represented him personally?

A I have on occasion, yes.

Q When is the first time that you heard about Vencap?

A My best recollection would be in the spring of 1972.

Q Will you describe the circumstances under which you first heard about Vencap?

A Well, I was in Nassau working on a transaction for another client and Mr. Pistell was down there at that time because he had a potential interest in the transaction as a broker.

In the course of those negotiations, Mr. Pistell first raised to me his concept of forming a venture capital corporation in the Bahamas and thereafter asked me to cause a corporation to be formed for that purpose and I retained Carson, Lawson to do the legal work.

Q Do you recall about what time that was that you were instructed to form a corporation and retain Carson, Lawson?

A I believe it was June 1972.

Q Mr. Murphy, I show you Plaintiffs' Exhibit 12-278, what we have been referring to as the three page memorandum, and ask if you can identify that document.

A I have seen this document before ,yes.

Q Did you prepare that document?

A No.

Q Do you know who did prepare it?

A I believe I had prepared a memorandum at Mr. Pistell's request putting forth the general outline of the purposes of the company. In the course of his negotiations with the attorneys or our negotiations with attorneys for IIT, in I believe it was September of 1972, they wanted a document to memorialize the transaction --

THE COURT: The attorneys for whom?

THE WITNESS: ITT.

THE COURT: Who were they?

THE WITNESS: They were Willkie, Farr and the local counsel was Higgs & Johnson.

A (Continuing) To memoralize the transaction and Mr. Pistell discussed it with me. I said "Why don't you give them the memo that I prepared at your request with respect to the purposes of Vencap"and that was done.

I believe this letter was typed or prepared on Vencap stationery in the offices of Carson, Lawson.

Q Did all of the significant discussions you had had with Mr. Pistell and with the lawyers, Willkie, Farr and the other firm who you mentioned, where did they take place?

A They took place primarily at Paradise Island.

MR. ANDERSON: May I make an objection to that question, your Honor. I think the significant question leaves matters of judgment to the witness which is properly for the court.

THE COURT: Yes, Mr. Oram. Rephrase the question.

Q Where did the discussions with respect to Vencap that you have already testified to take place?

A Well, with Mr. Pistell personally, at my place at Lyford Cay. With the opposite side primarily at Paradise Island. Paradise Island, incidentally is in Nassau.

Q I ask you to look at page 2 of Exhibit 12-278 in which there is discussion of a possible investment in a Caribbean airline. I wonder if you could enlighten us as to what that, if you know, refers?

A Yes.

Out Islands Airways was the local scheduled carrier in the Bahamas. An inter-island carrier, and it had obtained a Route 6 designation from the CAB which entitled it to fly international flights between points in Florida, Miami, Tampa, Fort Lauderdale, to and from points in the Bahamas, and they were in the process of implementing those new routes with jet service.

In the course of my conversations with Mr. Pistell on various matters, nothing is background in the airline business at Frontier and with Biwi I showed him the Out Islands operation. He expressed an interest in it and I advised him that the company was planning this capital expansion and asked him if he cared to consider participating in it.

Q Do you know of your own knowledge whether in fact Vencap did make an investment in Out Islands Airways?

A Yes. The transaction was closed in December of 1972. Vencap went $662,000 at 9 per cent interest to Out Island Airways, received a convertible debenture

of Out Islands Airways and a floating lien on its assets. That transaction was subsequently rescinded because shortly after we did it, the government of the Bahamas came to Out Island and advised that they were going to go independent in July of '73 and would like to have a national flag carrier and proposed to buy out the assets of Out Island.

Since that materially changed the transaction that Vencap went into, they were fully taken out on the closing with interest paid for the entire period.

Q In addition to the $662,000 plus the interest that was repaid to Vencap, did Vencap receive anything else when they liquidated their position?

A Yes. They received 6,000 shares in Turks & Caicos Airways.

Q Are you familiar with Turks & Caicos Airways?

A Yes, I am a director.

Q Could you give us, as best you can, your value as to the 6,000 shares of Turks & Caicos Airways?

A That is difficult to do. The value of an airline, particularly an international one, though small, the intangible value of the route structure can be quite substantial.

In the case of Turks & Caicos, they have the exclusive rights to service the Turks & Caicos Island.

At the request of the government of Haiti, we have the exclusive rights to service the domestic routes within Haiti and we have the international route between Turks and Caicos and Haiti.

In addition, we have a reciprocal right to fly to the Bahamas and will eventually expand that into Florida.

Q Is it your judgment in light of those facts that the shares of Turks & Caicos Airways held by Vencap have some value?

A Yes. We just finished an equity financing to raise additional funds for capital equipment and working capital purposes where the shareholders and directors invested an additional 200,000. Vencap's 6,000, before the new capitalization had a value at the price paid for as part of the new equity financing of $1.54. What the company did was to give an offering to stockholders, to Bahamian stockholders of 14 shares for each one share at 118 a share, but on a whole share basis, that was worth $1.50.

Q Mr. Muprhy, do you know where the principal office of Vencap is?

A Yes.

Q Where is that?

A Lyford Cay, Nassau, Bahamas.

Q Do you know where the principal office of Intervent is?

A Yes. With the exception of Flag Redfern -- yes. Intervent is in Lyford Cay also.

Q Do you know where the principal office of Intercapital, N.V. is?

A Lyford Cay, the same place.

Q Mr. Murphy, do you know why the principal office of Vencap was located in Lyford Cay?

A Yes. Lyford Cay is a unique spot in that annually, international leaders of finance and business either have homes there or come there to visit for the winter season and it is an excellent place for anyone in the business area to meet socially and otherwise intermingle with these people of substantial background.

Q Mr. Murphy, do you know Robert Vesco?

A Yes.

Q How do you know Mr. Vesco?

A I met him in connection with another client when Property Resources Limited was negotiating to buy Paradise Island or portions of it.

Q Have you ever dealt with Mr. Vesco in connection with Vencap, Intervent or Intercapital?

A Never.

Q Do you know Mr. Leblanc?

A In the same relationship I know Mr. Vesco. He was brought in and introduced to me and my clients as I believe the head of the Bahamas Commonwealth Bank which was going to participate in a portion of the financing of the proposed purchase of Paradise Island.

Q Did you ever meet with Mr. Leblanc in connection with matters involving Vencap?

A Never.

Q Mr. Murphy, do you know Mr. Meissner?

A I don't believe so.

Q Do you know Mr. Graze?

A No. When I say no, I may have been introduced to those people but I never said more than how do you do to them.

Q Have you had an opportunity to read the complaint in this case?

A Yes.

Q Do you know that there are in that complaint allegations that you personally together with your partner Mr. Taylor and our law firm conspired to defraud the shareholders of IIT?

A I read the complaint.

Q Have you ever participated in a conspiracy to

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defraud the shareholders of IIT?

A Never.

Q Have you ever in your dealings with Vencap or related companies or Mr. Pistell have any reason to believe that such a conspiracy existed?

A No.

MR.ORAM: You may inquire.

THE COURT: You say you gave some advice to Mr. Pistell at the time or in connection with this three-page memorandum. You are familiar with the document?

THE WITNESS: Yes. What I was referring to --

THE COURT: I am not concerned about the document so much. You were consulting with Mr. Pistell, is that correct?

THE WITNESS: Yes, sir.

THE COURT: On matters of American law, United States law?

THE WITNESS: No, sir. What gave rise to the memo that I drafted which was not this, my memo was designed to merely give, try to give a succinct statement of the purposes and objectives of Vencap as I had developed them and discussed them with Mr. Pistell.

What happened, because I see some of the language in this letter is, when counsel for IIT wanted to

memorialize their investment here, that was given to them and this was a result of it.

I call your attention, your Honor, that this instrument refers to the minutes of August 31, 1972 and refers to a copy of those minutes setting forth the preferential rights to the Vencap preference stock so that the transactions at the time this memo was prepared, was, for all practical purposes, complete. It was done after the fact, so to speak, and it was done in Nassau, my recollection is, about the last week in September of 1972.

THE COURT: You were being consulted by Mr. Pistell as a lawyer at that point in time, I take it?

THE WITNESS: Yes. I have never acted for Mr. Pistell in any other capacity.

THE COURT: Except as a lawyer and you were advising him about American law or Bahamian law?

THE WITNESS: American law, but I was primarily working with the local counsel down there when called upon.

Down there, the local counsel take their instructions in a case like this from the lawyer, American lawyer, British lawyer, whatever, and they rarely talk to the client. They look to his counsel for their instructions and that is what happened in this case.

I instructed Jerry Wadel of Carson, Lawson which is one of the leading firms down there to form this company and give him a general outline of what its purposes were.

THE COURT: Were questions of American law involved in what Mr. Pistell wanted to do?

THE WITNESS: Not really, because this was designed as an offshore company, as a Bahamian company to be operated --and in fact the exchange control regulations designate it, for exchange control purposes, a non-Bahamian company, meaning it couldn't do financing business within the Bahamas without special exchange control permission.

American law never really touched on this other than to the extent that tax considerations would arise because of our tax laws.

THE COURT: What were those, the tax considerations?

THE WITNESS: They are innumerable, but one of the reasons, for what appears to be an elaborate set of financing to minimize the effect of United States taxes on these companies or on Mr. Pistell as the case may be.

THE WITNESS: I am not sure why American taxes would be involved. Why were American taxes a consideration?

THE WITNESS: Whenever you have an American citizen as an investor in a foreign company --

THE COURT: I thought I was told he had become a non-American citizen.

THE WITNESS: He is a non-resident but he is still an American citizen. If he owns General Motors stock and earns a dividend, he has to pay income tax on it.

THE COURT: I guess that was a bad example I used with respect to General Motors.

Do you own any General Motors stock, Mr. Pistell?

MR. PISTELL: Never have in my life, sir.

CROSS EXAMINATION

BY MR. ANDERSON:

Q Mr. Murphy, you qualified an answer to one of Mr. Oram's question by asking him whether he was addressing -- whether he was askingyou "as an attorney" and I take it you acted in no other capacity other than as an attorney?

A I did not, no. My reference to Mr. Oram's question was, I think he asked me my background and I said as an attorney.

Q That is my standing.

A I did have an existence before I became a lawyer.

Q Have you had an existence since you became a lawyer other than a lawyer?

A No. I have always practiced law. That is my profession and other than making investment, good and bad,

no.

Q And I take it that if there is sworn testimony in the record that you prepared Exhibit 12-278, that is your testimony that the sworn testimony that you prepared it was incorrect?

Let me go back to that.

Mr. Pistell testified that you prepared Exhibit 12-279. Was he correct or incorrect?

A He was mistaken that I prepared it in the form it is in in this document. He would be correct in saying that I had initially prepared an outline description of the purposes of Vencap which included -- portions of which have been incorporated in this document.

Q Do you recall being present when Mr. Pistell so testified before Judge Stewart?

A I was not present.

Q I take it that the document 12-278 was prepared some time in the latter part of September, 1972?

A That is my best recollection. The circumstances that lead me to that conclusion are that in the negotiations for the sale of Paradise Island or portions of it, they had been initiated in January, February, of 1972, were terminated in or about April and were resumed again in late August, September of 1972 and the last week in September, the

representatives of the purchasers which included the property resources people, New York counsel Willkie, Farr, their local counsel Higgs & Johnson and my principals and I and our counsel had a four or five day meeting at Paradise Island, at which these agreements were being reworked and negoaited and it was at that time, my recollection is, that Mr. Pistell said that the Vencap thing was progressing along and counsel wanted something to memorialize it.

I was rather pressed so I said why don't you give them that and see if that will do.

THE COURT: Was Mr. Pistell involved in the Paradise Island negotiations?

THE WITNESS: Not in the negotiations. He could have earned a brokerage fee had the transaction been consummated.

THE COURT: He wasn't present at the negotiations? You say they were four or five days?

THE WITNESS: It is hard to describe these negotiations, your Honor, because there was one mass meeting with counsel and principals that broke up into a series of fractionalized meetings where specialists in any given area were doing their things, the accountants were doing their things, the casino experts were doing their things and the building experts were doing theirs. Mr. Pistell was

in and out. His main effort was to, when emotions got a little high between the principals, to try to calm things down, which he did very well.

Q Did you see the three-page memorandum at or about the time it was prepared?

A No, I didn't see this memorandum until I guess it was last night or this morning. "This" being on the Vencap heading.

Q 12-278?

A Right.

Q You never saw that in your life before last night or this morning?

A I had not, no.

Q I take it that Mr. Pistell's testimony at the hearing that your firm mailed that 3-page memorandum to Mr. Graze was inaccurate in your view?

A It was. This was, to the best of my recollection, was typed and hand delivered in Nassau to attorneys for IIT.

Q Do you know when you or anyone else from your firm mailed a copy to Mr. Graze?

A I know I do not and I am fairly sure that my firm did not.

Q You seem somehow hesitant about this document.

Assuming that it was prepared at or about the time you say it was prepared, is the document in any way inaccurate?

A I haven't studied it.

The first sentence is accurate--

MR. ORAM: May I inquire what Mr. Anderson means by the word "inaccurate"?

THE COURT: I take it that is something the witness will have to deal with.

Do you understand what the word "inaccurate" means?

THE WITNESS: I think I do. I understand counsel is asking me to read this and tell him if I see anything that is inaccurate in there that I know of.

THE COURT: Before we get to reading the doucment, it is addressed to Intercapital Investments.

Do you know if it was sent to Intercapital Investments?

THE WITNESS: The answer is no, I have never heard of that firm.

THE COURT: Do you know if this document was sent to anybody?

THE WITNESS: I only know that it is my understanding, hand delivered in the Bahamas to counsel for IIT, I believe Wilke Farr.

My recollection is that the company didn't even have letterheads at the time this arose.

THE COURT: Which company?

THE WITNESS: Vencap, and I think Mr. Pistell was running around trying to find a local printer to get him some stationery on which to put this document.

THE COURT: Is there a date on this document?

THE WITNESS: Have not seen one. I had first thought it was a date at the top, but that is their exhibit mark.

I don't see a date, but page 3 does refer to the August 31 minutes, so I am fairly confident --

THE COURT: This was on or after that date?

THE WITNESS: Yes. I can see one error I think on the first page --

THE COURT: I was going to say that Mr. Anderson asked you whether any of the statements in here were inaccurate.

Q At the time it was written.

A I believe that the reference in the second sentence in the second paragraph, to a total of 5,000 authorized an outstanding is in early. I believe there are only four. I don't see anything else that is inaccurate.

I at the moment can't recall at what point in time the Out-Island people revised their plans on the million, five, so we went to a smaller amount of money.

The original contemplation and discussion with Out-Island was for a million, five.

Q Does Exhibit 120278, omit to state any facts necessary to make the facts stated therein accurate?

A You are asking me a question under the United States Securities Law. At least that is the terminology that I usually address my mind to, when you omit or fail to state a material fact. This was not drawn with respect to a United States securities transaction or with respect to an application of the securities laws of the United States.

THE COURT: But I think the question can be taken without regard to the United States Securities Laws.

THE WITNESS: I frankly find that hard to omit to state any material fact.

THE COURT: The question was, was there anything left out that should have been included to make what was said here meaningful?

THE WITNESS: I don't know, sir, I didn't prepare it.

THE COURT: You think the statement should have been more complete or do you think it is complete?

THE WITNESS: I think for the purposes that it was designed for, it is complete, yes.

Q And it was designed for the purpose of having IIT make a $3 million investment.

MR. ORAM: Objection. That is not his testimony.

A What the document did was to memorialize something --

THE COURT: Mr. Murphy, Mr. Oram objected. I think the objection is a good one. However, perhaps you could put the question again.

Do you want to finish what you are saying, Mr. Murphy?

A I was merely trying to make the point that the substance of this transaction with Vencap and the $3 million investment had all been agreed upon. This instrument, the preference rights, the resolution, at least the initial drafts had been adopted at the August 3131 meeting.

This instrument was not designed as a selling instrument. It was merely designed to memorialize the transaction that had already been agreed upon and was subsequently to be closed. I think the document makes

that clear.

THE COURT: Entirely apart from that, the document says in the very first sentence that the within memorandum is submitted in connection with the private placement of securities referred to herein.

I guess Mr. Anderson's question is, having that in mind, the purpose for the document, do you believe there are any facts that should have been included in light of what is stated herein which were not included?

THE WITNESS: Not that I know of, sir.

Q And you were counsel to Vencap at or about the time this document was prepared, is that correct?

A That is correct. I was one of the counsel.

Q Mr. Murphy, I show you Exhibit 12-262 and ask you if you are familiar with that document.

A Yes, I have seen this document before.

Q Did you participate in the negotiation of the September 29, 1972 agreement between IIT Management and Vencap?

A No.

Q Did anyone else from your firm participate in that?

A No, not to my knowledge.

Q Would you refer to the terms and conditions of

the preference stock which are attached as an exhibit to the September 29, 1972 agreement between Vencap and IIT Management?

A Yes.

Q Do you find those?

A Yes.

Q Did you participate in the negotiations of that document?

A No.

Q Did anyone in your firm to your knowledge participate in the negotiation of that document?

A Mr. Taylor may have.

Q Would it refresh your recollection if I told you that Mr. Taylor has told us "We reviewed it and we requested certain changes, particularly in the provisions as I recall relating to the preferred shares."

Does that refresh your recollection as to whether or not Mr. Taylor participated in the negotiations of the documents you have in front of you?

A That doesn't describe negotiations, Mr. Anderson, it describes drafting of an instrument. There is a world of difference, at least in my mind between negotiating something and drafting something that has already been negotiated.

Q Did you hear Mr. Oram's questions to Mr. Taylor yesterday about Mr. Taylor's negotiations?

A I don't know that I was here at that time. I got here in the afternoon. I don't recall it.

If I understand what you are saying, the negotiations, no. The drafting, wording of the instruments, working with the attorneys, yes, Mr. Taylor participated in that and to a less extensive degree, so did I.

I gave the initial instructions based on information supplied me by Mr. Pistell to Carson, Lawson to form the company, but the negotiations of the investment interests were handled by Mr. Pistell.

Q If Mr. Taylor testified yesterday with respect to negotiations with Wilke Farr in New York was correct or incorrect?

A No. If he negotiated, he negotiated. I am telling you what I mean by negotiate.

Q Is it your recollection of this entire transaction that Mr. Graze and Mr. Pistell agreed to broad outlines and left it up to the attorneys in New York to reach agreement?

A All I know on that, Mr. Anderson is what Mr. Pistell told me. That he as a result of his discussions

with Mr. Graze, that one of Mr. Graze's companies was going to make an investment in preferential shares in Vencap and outlined the general terms of it which I relayed to Bahamian counsel. This took place down in the Bahamas. His discussions with Graze did and his instructions to me.

Q To your knowledge, were you present every time Mr. Pistell ever talked to Mr. Graze?

A I was never present at any time that Mr. Pistell talked to Mr. Graze.

Q So you have no personal knowledge whatsoever as to what those conversations were between the two, is that correct?

A I just testified whatever I know about those conversations was told to me by Mr. Pistell.

Q Did Mr. Pistell tell you that he and Graze agreed to broad outlines?

A I don't recall his using that term.

Q In substance, did he give you the broad outlines of the transaction?

A Yes. He told me that he was working on a transaction with one of Mr. Graze's companies, that were under, $3 million would be invested on a preferential share basis in Vencap.

When we formed Vencap for him, to my knowledge, IIT was not in contemplation as an investor. Mr. Pistell had other potential investors he was going to try and interest in Vencap. It was thereafter that the Graze transaction or negotiations took place.

Mr. Pistell advised me of them and we acted accordingly.

Q Is it consistent with your recollection that the form of the investment "I" meaning Mr. Pistell "left more for the attorneys, let them talk it over and work it out whatever they wanted to do"?

A I am sorry, I missed the question.

Q Is that statement by Mr. Pistell consistent with your recollection of the events as they transpired in September and October of 1972?

A Certainly it is consistent with it.

The wording of the resolutions and the rest Mr. Pistell didn't have anything to do with. That was done by the lawyers.

Q The form of the investment was left to the lawyers, is that correct?

A Not the form of the investment.

Q So Mr. Pistell was inaccurate when he testified to that?

A If that is what you mean by form, yes.

Q I mean what Mr. Pistell meant.

A I don't know what Mr. Pistell meant by "form".

Q At the time you showed Mr. Pistell, I believe "showed" was your word, Out-Island Airways, did you own any equity interest in Out-Island?

A Certainly.

Q Were you a principal stockholder of Out-Island Airways?

A No, I owned 1,000 shares out of 134,000. The principal shareholders in Out-Island were Roywest Banking, Schroder Capital, CDFC, London and some individuals.

Q Mr. Murphy, I believe you were a director of Vencap for a period of time, is that correct?

A Briefly when it was formed, yes.

Q Do you recall when you resigned?

A I don't. I believe it was in the fall of 1972.

Q Do you know whether that resignation was in writing?

A Yes, it was.

Q I show you Plaintiffs' Exhibit 12-259 and ask you to tell the Court what that document is.

A There are several documents here. The first one is a minute of the first general meeting of the

members of Vencap.

The second is a letter to the register general of corporations on behalf of Vencap.

The third is a note required by Section 33 of the company's act of the Bahamas and the fourth is the corporate statement required to be filed by corporations when formed in the Bahamas.

Q Does that last item list you?

A Yes, it does.

Q What does that item indicate as your occupation, Mr. Murphy?

A It says executive secretary and director.

Q Were you a secretary of Vencap at that time?

A I probably was.

Q Does that document indicate that Mr. Lawson's profession --

A Yes, as an attorney-at-law.

Q And for your profession, executive is listed?

A That is what they put.

Q Do you know who prepared those documents?

A Carson, Lawson.

THE COURT: Do you remember Mr. Murphy, you left Vencap as a director in September of 1972?

THE WITNESS: I left in the fall.

THE COURT: Do you remember who the directors were when you resigned?

THE WITNESS: I traveled so much I had to leave. I believe Mr. Pistell was one and I have frankly forgotten whether Mr. de Reincourt or Mr. Blackman was, but I think Ray Lawson took my place as a director and that is because he is down there.

THE COURT: Do you know who the directors are today?

THE WITNESS: Of Vencap?

THE COURT: Yes.

THE WITNESS: Mr. Lawson, Mr. Pistell and Mr. Blackman.

Q I show you Plaintiffs' Exhibit 10 which are the stockholders proceedings of Vencap and particularly the sheet entitled register of directors of Vencap and I ask you if your name is listed?

A Yes, it is.

Q What does it show as your occupation?

A Executive. I am flattered.

Q Mr. Murphy, in connection with the sale -- would it be proper to say that Vencap sold its interest in Out-Island Airways? How would you characterize that transaction?

A In my own mind I look upon it basically as a recision because I think they made the investment or bought the debentures, really, in December and the Bahamas government approached us in February and we concluded with the Bahamas government in August and at that time Vencap received back at 662 with interest and also its interest in Turks & Caicos.

Q Characterizing that transaction as a recision, do you recall discussions with the government of the Bahamas with respect to that recision?

A I recall discussions with the negotiating committee for the government, yes.

Q In any of those discussions, were you told that the government of the Bahamas did not want to do business with Mr. Pistell?

A No.

MR. ANDERSON: I have no further questions.

MR. ORAM: I have no further questions.

MR. ORAM: Defendant calls Richard Pistell.

R I C H A R D C. P I S T E L L, called as a witness by the defendants, being first duly sworn, testified as follows:

THE COURT: Mr. Morse, as I understood the ground rules before, Mr. Pistell was called on a preliminary matter and we were not going to get into matters of substance and I assume we are now and I assume --

MR. MORSE: Your Honor, I would call this direct and assume it was testimony on a preliminary matter. We have no objection to Mr. Oram handling this portion even though Mr. Brown did it before.

THE COURT: Is there a problem about leading a witness, is that what you are concerned about?

MR. MORSE: We haveno problem at all. I just thought it was a matter of how the reporter wanted to denominate the examination.

MR. ORAM: I so understood it the same way.

DIRECT EXAMINATION

BY MR. ORAM:

Q Mr. Pistell, briefly and as completely as psssible, can you give us an outline of your background and business experience.

A I started with the firm of Vanelstine, Noel in 1944

1945. I became a security analyst. I then became a partner of the New York Stock Exchange of Aleck & Company. I then formed my own firm Pistell & Company out of the W.W. Schroeder firm. I became an investment banker underwriter for venture capital firms. I then became the chairman of the board of Goldfield Corporation, Tantala Mining Corporation of Canada, Getchel Mines of Nevada, American Chrome Corporation, chairman of the board of Caribbean International, director of British West Indies Airline, chairman of Blums of San Francisco, chairman of Uncle John Restaurant, chairman of Yellowstone National Park, chairman of Everglades National Park, etc.

THE COURT: Yellowstone National Park, is that a private organization?

THE WITNESS: I was the first one in this company to buy private concessions in national parks in order to have the food service businesses and the tourism business in those parks.

THE COURT: It was or is a private park?

THE WITNESS: It is a private concession but all the grounds are owned by the peoples of the United States.

THE COURT: It is a concession?

THE WITNESS: It was voted to me and my company by the Congress for 30 years.

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Q Mr. Pistell, can you tell us when it was that you first thought of forming Vencap?

A I would say it was the en of 1971, toward the beginning of 1972.

Q What did you conceive the business of Vencap to be?

A Vencap was going to be a company in the venture capital business that was going to be set up and to enable the stockholders to participate in a share of the profits, not necessarily looking at common dividends but building the equity of the corporations to make substantial capital gains.

Q Did you discuss Vencap and your idea of Vencap with others?

A Yes, I did.

Q With whom, for example?

A I discussed Vencap with quite a few of my friends that had been in business with me. The same group necessarily that put the money up on Chibex. People like Dean Witter, people like -- I can't remember all the names now, but numerous people.

Q Included in the people that you talked to, did you talk to Mr. Graze?

A I met Mr. Graze early in the negotiations of

Resorts International for the purchase of the Vesco group. He had been a professor of economics at I believe the University of Wisconsin and as I previously testified, I got to know him on Paradise Island and we talked over the economic, world currency situations and I found a very great rapport in our thinking together on how to invest money and where to put money for the future.

Q These discussions about world money markets with Mr. Glaze, where did they take place?

A I would say mostly on Paradise Island.

Q Any place else that you can recall?

A London.

Q In those discussions with Mr. Graze, did you express a philosophy at that time about international money markets?

A Yes, I told him as I previously testified in this court a year or two years ago, that I never thought that the fixed parity currencies would stay, that there would be a floating of currencies, it would be a dirty float, and that I thought at that time that gold was a very good buy which I canot buy as a U.S. citizen, but I thought that the yen expressly and the mark were very good purchases at that time.

Q When did you have those discussions, in what time

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area?

A I would say towards the end of 1972.

Q 1972?

A During the whole period of 1972since I would say since the first time I met him.

Q Do you recall what if anything happened in the international money markets in 1972?

A The first devaluation happened in 1972. The dollar was devalued and the start of the bullion markets of the world started.

Q Do you recall, Mr. Pistell, when Vencap was actually formed?

A I believe Vencap was formed on June 30, 1972.

Q At the time that Vencap was formed, had you reached an understanding with anyone as to an investment in Vencap?

A I had been talking to Mr. Graze about the first venture that I was going into which was Out Island Airways which I was not only looking at as an airline but as an integrated tourism setup and they said they would be interested in participating in that venture.

Q Did they indicate they would be interested then in participating in Vencap?

A That is correct.

Q Did you prior to the actual investment in Vencap buy IIT or at what point prior to the actual investment did you come to an understanding with with Mr. Graze as to whathis company's investments would be?

A Thatwas at the request of Mr. Graze. I told him that I was forming Vencap. They said they would like to participate in it. I had meetings in the Bahamas and I had, I believe, one or two meetings in London and they expressed an opinion. They had known some of the past deals that I had done that they would like to take the first position in Vencap.

Q Would it be fair to say, Mr. Pistell, that in large measure Mr. Graze's decision to invest in Vencap was another way of saying that he had decided to invest in you?

MR. ANDERSON: I will object, your Honor, to Mr. Graze's state of mind.

THE COURT: Sustained.

Q Had you dealt with Mr. Grazebefore?

A No, I never have dealt with Mr. Graze before.

Q Mr. Pistell, I show you 12-278 and ask you if you can identify that.

A Yes, I have seen this before.

Q Can you tell us the circumstances under which it was prepared?

A This was a memorandum prepared in Nassau to the best of my memory by Carson, Lawson for the basic philosophy of the closing of the first initial step of Vencap.

Q Do you know why it was prepared?

A It was prepared at their request so they could have a memorandum of understanding on the thing.

Q Do you know of your own knowledge, Mr. Pistell, when Plaintiffs' Exhibit 12-278 was prepared?

A To my own knowledge, I do not.

Q To your own knowledge, do you know whether it was prepared before or after the closing of the Vencap deal?

A It was closed, I believe, before.

THE COURT: I am sorry, I didn't get that.

THE WITNESS: It was done before.

THE COURT: That was prepared before?

THE WITNESS: Yes. Mr. Murphy and I had gone over an outline and as I remember we had no stationery at that time on Vencap and we had to get some stationery printed up in the Bahamas to deliver Carson, Lawson to write it up.

THE COURT: Can we put a date on that document?

THE WITNESS: I can't.

MR. ORAM: I think the only thing we can say,

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your Honor, it is after August 31st.

THE COURT: And before September 29th?

THE WITNESS: I would say so, but I can't say.

THE COURT: September 29th is the day of the deal.

THE WITNESS: But I wasn't there at the time of the closing, sir.

THE COURT: Can I assume that this was some time in September?

THE WITNESS: August or September, I would say.

Q I had to be the last day of August so our assumption should be limited to September because it refers to an August 31st date?

A Right.

Q Mr. Pistell, in your discussions with Mr. Graze, did you ever advise him or urge him to dispose of any "blue chip securities" for the purposes of investing in Vencap?

A I did not. I did say to Mr. Graze in the end of 1972, however, that I would get in a liquid position as I have stated in this court before and I would buy mark and the yen and gold bullion if I could.

Q Mr. Pistell, do you know of your own knowledge the source of the funds that IIT invested in Vencap?

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A I do not.

Q I take it that you did not know then?

A I did not know then, and I do not know now and basically I didn't know if it was IIT, FOF or whatever entity it came from.

THE COURT: Is it fair to say you didn't care?

THE WITNESS: Basically we had made a deal in principle and there were so many entities floating around, your Honor, I didn't know what source or where they were coming from.

THE COURT: You just wanted the $3 million?

THE WITNESS: I just wanted to close the transaction, we had agreed on because I had other plans with other people.

Q At the time that you reached your understanding with Mr. Graze, did you have any reason to believe that IIT could not enter into this transaction?

A I have no idea if it was IIT or whatever fund it was that they couldn't and I have no knowledge of that today, whether they could or they could not. I am not a lawyer and I did not read the bylaws of the various funds. That is not my function.

Q You sought, I take it when you had reached this arrangement with Mr. Graze, legal advice as to the

formation of this corporation?

A That is correct, out of Mr. Taylor who is an offshore tax expert and from Mr. Murphy and I knew it had to be an offshore corporation and I knew it had to be domiciled offshore and I took the necessary steps to move offshore to be able to run this fund, or I shouldsay this venture capital company.

Q Mr. Pistell, you have entered into an employment contract with Vencap, have you not?

A That is correct, sir.

Q And that employment contact provides for salary of $60,000 a year, is that correct?

A That is correct, sir.

Q And it also provides for a home in the amount of $150,000; is that correct?

A A home and an office, combination.

Q At the time you relocated to the Bahamas to operate Vencap, can you describe for the Court what it was you were leaving in order to go to the Bahamas to run Vencap?

A I resigned my position as chairman of the Executive Committee of Lincoln American Corporation at a substantial salary plus expenses. I gave up 100,000 share stock option. I had just refurbished an apartment at 817 Fifth Avenue. It was going to become a condominium.

Mrs. Pistell and myself had spent in exess of over $250,000 just on the fixtures, furniture and electrical works which we walked out of cold and left as a rental.

Q Would you, Mr. Pistell, have left that job and that investment and go to the Bahamas to run Vencap until you had some reasonable certainty as to what compensation you were to receive?

A I certainly would not have.

Q There came a time, did there not, Mr. Pistell, when you borrowed $590,000 from Intercapital, is that correct?

A That is correct, sir.

Q Was that loan collateralized?

A That loan is not only collateralized but also carries a carried interest. It is not only a loan, it always has a 10 per cent carried interest to Vencap in the equity.

Q Maybe you will explain for the record what is a carry interest?

A I anticipate in the formation of a company, if I may use my notes to go over this, if I can find my notes.

The Flag Redfern Oil Corporation is an evaluation by one of the leading people in Texas, Bailey Sipes, dated 1971, I believe, 9-18-71 showed my personal interest of net income in these projects that later became merged

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into the Flag Redfern Oil Compansy as $797,367.

That company became merged in a company called Flag Redfern Corporation. Flag Redfern Corporation is situated in Midland, Texas, and I would like to read the following if I may which is a letter I have just received from the Flag Redfern --

Q Before you do that.

I asked you to explain what a carry interest was.

A My original cost on these shares when they were marged into the Flag Redfern Corporation was approximately $12 a share. That stock, incidentally in the past 60 days has been split 2 for 1. So my total holdings now as collateral are exactly 41,741 shares.

For the loan which I pay interest on, I not only took a loan but I gave the corporation an option to purchase or such is a carry interest on 10 per cent of the equity of my original cost.

Q Is it your testimony that the value of the Flag Redfern shares which you have placed as collateral exceeds the amount of the loan?

A I would like to say that the Flag Redfern Company just had a complete report done by DeGaulier and McNallston, the most outstanding oil geologists in the United States which will be arriving in New York shortly.

Their future gross income is $60 million. You take $12 million off of that for operating expenses. This is over proven reserves. You then take and cut those reserved by 90 per cent like any conservative bank would do and on the DeGaulier, McNallston report, the net liquidating assets of those shares is $25 a share. However, it will earn approximately $3 a share this year. Domestic oil and gas stocks do not sell for their liquidating value, so I would say the collateral in back of this loan far exceeds the loan and I would say that the 10 per cent carried interest to Vencap in my estimation is worth a very considerable amount of money.

Q Mr. Pistell, I take it that the principal reason, and I believe you testified to this, of the loan from Intercapitalwas to dispose of a tax problem that you had had?

A I had a monumetnal tax problem at that time.

Q If the Flag Redfern stock was valuable as you suggested it was and is, why would it have been simpler to sell that stock and dispose of the tax problem?

A That would just have compounded my tax problem.

Q How is that?

A I would have had to liquidate the position in a company that I thought was going forward to pay the tax

department off but on top of that, I would have created more taxes.

THE COURT: Why was this a good deal for IIT?

THE WITNESS: Because they could normaly get a good collaterized loan, but also a carried interest.

THE COURT: I am talking about the $3 million, not the 590. Why was this good for IIT?

THE WITNESS: You mean why shouldn't they have done the whole deal?

THE COURT: Yes.

THE WITNESS: Because it is a $60 million company.

THE COURT: Why should they make a deal with you?

THE WITNESS: I don't follow you, your Honor, you mean why shouldn't I just go to a bank and do it?

THE COURT: IIT Decides they want to spend $3 million. Why should they make a deal with you?

THE WITNESS: Why should they?

THE COURT: Why did they? Why was it a good deal from their standpoint.

THE WITNESS: Because IIT had known the past records of the companies I built and believed from my past record they ould get very substantial capital gains.

THE COURT: They didn't make the deal I take it to help you out of your monumental tax problems?

THE WITNESS: No. I told Mr. Graze I was going to do this deal and borrow this money prior to this and he said it would be very fair if Vencap would get a carried interest from it and I said what do you think would be a fair carried interest and he said why don't you call a couple of people in Wall Street and see what they think would be a fair carried interest.

THE COURT: I am still a little puzzled. I don't have $3 million, but suppose I had $3 million in 1972. Why would I put it in Vencap?

THE WITNESS: I would think you wouldn't put it in Vencap unless you knew the person that was going to run Vencap andhis past track record. I don't mean this, your Honor, but last night there was a program foronc hour on Armand Hammer of Occidental Petroleum. I started and helped his company when he had a million shares at 50 cents. I I financed companies like Capital City Television with a million dollars equity which is now selling for over $500 million on the New York Stock Exchange. That is why you would invest in Vencap but if it was just another investment, one of these fellows sitting up in an office, you wouldn't invest in it, do you follow me?

THE COURT: I take it Mr. Grazeknew that you had

a monumental tax problem?

THE WITNESS: It wasn't that monumental.

THE COURT: He knew you had a tax problem?

THE WITNESS: Yes, definitely.

THE COURT: And he knew you were going to use some of this money to deal with that problem?

THE WITNESS: Right. He knew I was going to put it up as equity and I told him I was going to give Vencap a carried interest in the act.

THE COURT: Did Mr. Graze know about the employment contract you had with Vencap?

THE WITNESS: I don't believe he did. Basically after our deal was done, he knew he was going to have an employment contract, etc., but he never really followed anything that closely thereafter.

THE COURT: What I am getting at, the allegations in the complaint say this was a deal to get money to you for your personal use.

THE WITNESS: That, Judge, let the record speak for itself.

THE COURT: Well, part of it was to get money to you so you could pay your taxes.

THE WITNESS: I could have taken this to any bank in the country and got even a loan at that time, but

if the company that I had an interest in could share in the quity, in the participation, it was also a benefit to me and the company as a common stockholder and the preferred stockholders too.

Q After the formation of Vencap but prior to the investment by IIT, did you personally make any funds available to Vencap?

A Would you repeat the question?

(Question read.)

A Yes. I had received a fee on a closing of a deal and I put a hundred thousand dollars in Vencap with the understanding that after the formation of the company I could take that hundred thousand dollars out of Vencap, as I so testified in this court before. Except for the start-up costs which later on I was permitted to take out after that.

Q Mr. Pistell, there has been some dispute here as to whether that fee that you made available to Vencap is a Pistell fee or Vencap fee.

Could you tell us when that fee was earned?

A That fee was earned approximately in -- well, I worked on that deal prior to the closing for two or three months, but I would say that deal, the closing was approximately August of '72.

Q You had performed the services prior to the closing, is that correct?

A That is correct. It was my fee earned by me and I put it in the corporation to help them out with start-up costs and also have the right to take that fee out of the company.

MR. ORAM: May we approach the bench?

(At the side bar.)

MR. ORAM: I propose now to examine Mr. Pistell with respect to the item which is shown on Exhibit 42-B, so-called check to Mr. Vesco and also on the issue of the irreparable harm to Vencap. I wish to inquire of Mr. Pistell the present state of some of his operations.

We have here a reporter from the Wall Street Journal and I am concerned that these matters will be broadcast and particularly with respect to the latter matter, a significant part of the problems with the Chibex finances arose upon the receipt of a Dow Jones release which we have discussed before.

I wonder if we could have this testimony other than in open court?

MR. ANDERSON: Is the principal problem with the Cameroons?

MR. ORAM: No.

THE COURT: As far as Vesco is concerned, I don't get very concerned about that. The other one, I don't know about.

MR. ANDERSON: What specifically is it? Do you mind disclosing it to me?

MR. ORAM: No. You know that Vencap has an option interest in Chibex and there are some fiancials which were being contemplated and those financials have suffered substantially as a result of the filing of this lawsuit and the public list that has come out of it. What I am concerned about, if that public list is duplicated by testimony here today with respect to the sate of those financials and the needs of the company, that that would merely compound the problem. It will seriously compound the problem.

MR.ANDERSON: I thinkwith respect to the Chibex financing, my judgment would be, it would be just as well to have the facts stated on the public record. If you are going to straighten out some misapprehensions that have heretofore been created, the publicrecord is the place to do it. I think the Vesco material is out. I don't mind having in camera proceedings on the Chibex thing, but I would like to limit it to that because I think the kind of totality of this story, all of the deals that he is working on --

THE COURT: What we will do, we will put the Vesco story for what it is worth, it doesn't seem to me to be very much on the open record. We will then go in camera on this Chibex thing and you will let me know when you want to go in camera.

(In open court.)

THE COURT: Can I see counsel again?

(At the side bar.)

THE COURT: I have a 4:15 date. I have a plea at 4:30, so we only have a few minutes more.

What is your suggestion in light of that, Mr. Oram?

MR. ORAM: I think I could finish.

THE COURT: What I really have in mind is, maybe you could put your questions about Vesco on the record now then maybe you and Mr. Anderson could work out a stipulation of facts that could be dealt with in camera on the Chibex matter so we don't really have to worry about the problem.

MR. ANDERSON: Could we do this: After his Honor leaves, if we could use your chambers and have that testimony taken as though it were a deposition.

THE COURT: No, I don't think you could do that. If you are going to be able to work it out, it ought to be

in the form of a stipulation.

(In open court.)

BY MR. ORAM:

Q Mr. Pistell, I show you Plaintiffs' Exhibit 14-42-B and ask you if you can identify the document on the fifth page on the left-hand side of that page?

A Which one do you want me to identify, the checks?

Q It appears to be a Xerox copy of the ledger side of a checkbook, is that correct?

A That is correct, sir.

Q Looking in the third from the last column, the first entry shows what?

A Joseph Burke, $50,000.

Q Above that?

A $150,000 deposit.

Q Is that the amount of the fee to which you have testified?

A That is correct, sir.

Q And the first check is?

A $50,000.

Q Payable to?

A Joseph Burke.

Q And the second entry says what?

A Robert Vesco, $10,000.

Q Can you explain the circumstances of that entry?

A Yes. As you don't know and the Court doesn't know this, I hardly ever carry a checkbook or I haven't written a check I don't think in 15 years. My accountants usually do that. That was moneys that I borrowed during a long stay in Costa Rico, not from Mr. Vesco. I believe it was from Mr. Clay or Mr. Cerni. Part of that money was pledged to buy a farm for the young symphony orchestra of Costa Rico which appeared in the New York Times and all the newspapers where they had one of the great young symphony orchestras of Central America there and what they wanted to do was to get a farm for them so they could be self supporting and I was one of the donators as President Figueroa said to buy this farm. I think the total price was $60,000 so these young wonderful musicians could earn their own way and have their own symphony orchestra.

The remaining two or three thousand dollars I bought various groups of Mayan antiquities which I brought back to this country and gave my wife a present.

When we looked on the credit slip, there was never a check written. This was just cash borrowed. The credit slip at the bank shows that it was credited to Mr. Harold Cerni's name.

Q The entry number 2 on that exhibit that says Robert Vesco is what, a memorandum to you?

A A memorandum, but there was $10,000 that I had given back that I borrowed from one of the boys when I was in Costa Rico. Also on this checkbook as we checked, there are three or four checks I have noticed that have never been written. I am not a very good check bookkeeper.

Q I show you a Xerox copy of an article, I believe this is a Xerox of an article from the New York Times dated May 30, 1973 and point out to you a paragraph in the last column and ask you if that is the article to which you referred?

A I hate to tell you this, but I have to borrow your glasses.

President Figueroa said for example, one item $60,000 was a donation from Mr. Pistell, Stanley Graze financier connected with IOS for the National Symphony Orchestra.

MR. ORAM: I would like to have this marked and offered.

THE WITNESS: I am on the board of the Lincoln Center in Washington and have been a director of the Metropolitan Opera Association for many years and a great lover of music.

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MR. ANDERSON: I would object to the entry in evidence of an article from a newspaper about events of approximately a year ago.

THE COURT: I think, Mr. Oram, we don't need the article in evidence. We have heard testimony about it. We know there is a story in the New York Times. We know from Mr. Pistell's own words what happened so we don't have to rely on the hearsay testimony. We do know there was an article in the Times. I think that is all.

MR. ORAM: I will withdraw it.

MR. ANDERSON: I think the document referred to by the witness should be marked.

(Defendants' Exhibit Q was marked for identification.)

MR. ORAM: I am just about to the area we are talking about.

THE COURT: Why don't we adjourn until tomorrow morning at 10 o'clock.

(Adjourned to June 20, 1974, at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
David Taylor	318	362	481	
Charles Murphy	483	495		
Richard C. Pistell	512			

EXHIBIT INDEX

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31, 32		31
33,34		430
35	478	
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Defendant		
N	349	350
O	353	353
P		382
Q	536	

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IIT, et al., etc.

vs.

VENCAP, LTD., et al.

New York, June 20, 1974,

10:00 a.m.

Trial resumed.

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(In open court.)

MR. ORAM: Your Honor, I wonder if I could for the record make a statement with respect to the matters that we have just been discussing.

Yesterday, I requested your Honor to take certain testimony bearing on the damages aspect, particularly as it affects Chibex, in camera. We have discussed the matter again this morning. Mr. Anderson has objected to taking that testimony in that manner, and accordingly your Honor has ruled that we must proceed with this aspect if we are to proceed at all in open court.

THE COURT: Yes.

MR. ORAM: Because of the damage that has occurred in connection with Chibex already by the filing

of the suit which Mr. Pistell has testified to and because we cannot in good conscience have additional testimony from Mr. Pistell or any other witness which might run the risk of accelerating that damate, I am going to be unable to present the testimony on that issue in this proceeding.

Mr. Pistell, would you resume the stand.

R I C H A R D C. P I S T E L L resumed.

DIRECT EXAMINATION CONTINUED

BY MR. ORAM:

Q Mr. Pistell, there are allegations in this complaint as you know, that the investment by IIT in Vencap is what is called in the complaint a sham. I would like to direct your attention to that allegation for a moment.

Do you think that is an accurate characterization of the operations of Vencap?

MR. ANDERSON: Your Honor, I object to this witness' opinions on these matters.

MR. ORAM: This witness is being called upon to respond --

THE COURT: Overruled.

THE WITNESS: May I have the question back.

(Question read.)

A No, I do not.

Q Tell me, Mr. Pistell, bring out the operations of Vencap, your understanding of those investments since you formed Vencap on June 30, 1972 and after it was funded in October of 1972, and particuarly, Mr. Pistell, as to its present value.

A Vencap was originally formed to go in the venture capital business and to enable to put it in a position to be able to make substantial capital gains and build the equity of the corporation in venture capitals, enabling all interested parties to make substantial gains.

As I visualize Vencap today, and as I look back on the past months of operation, No. 1, its objective was to preserve the capital as best as is able in today's economic atmosphere of one of devaluations, currency problems and world monetary turmoil. At times we have taken positions in the market but primarily always trying to keep a position in gold securities.

We have tried to obtain valuable concessions for Vencap which in the future could add a great deal to the cash flow of Vencap.

We have enabled Vencap to be in the position of being in the airline business and tourism business.

We have endeavored and tried to put it in a position at all times to where it would be in a position to be a substantial growth-oriented corporation and be in the position in the future to be of benefit to all shareholders of the corporation.

Q You view your operation ov Vencap as a serious business, don't you, Mr. Pistell?

A I view it as a very serious business and a full-time occupation.

Q And you in fact do devote substantially all of your time to this business, do you not?

A I do.

Q I think you testified, Mr. Pistell, that you were a security analyst for some period of time.

A Yes, I was. I was a member of the security analyst side.

Q And you still keep abreast of the publications which affect that particular branch of activity?

A I still keep abreast of all current business activities throughout the world.

Q Let me ask you, Mrs. Pistell. If you had in October of 1972 invested $3 million in the so-called mutual funds, what do you think that $3 million would be worth today?

A I think that $3 million, approximately, on the average U. S. securities would be worth approximately $2 million market value. I think that is without a 7 or 8 per cent front-end load and without management fees.

Q That would mean that the net value would be even less?

A I would say about 27 to 28 per cent less.

Q I think you testified here and in prior proceedings, Mr. Pistell, that you know Mr. Vesco?

A That is correct.

Q Did you ever discuss Vencap with Mr. Vesco?

A We have discussed it but not in great detail. He just knew that Mr. Graze and I were working on a deal to set up a venture capital fund at one phase.

Q Did Mr. Vesco show any personal interest in Vencap?

A Only one time when he learned we had invested in an airlines in the Bahamas and that he was financing a competitive airline through his bank. He got quite upset about it.

Q I think you have also testified that you know Mr. Leblanc.

A Yes, I have met Mr. Leblanc.

Q Did you discuss Vencap or investments in Vencap with Mr. Leblanc?

A No, to my belief I never have.

Q I believe you also testified that you know Mr. Meissner.

A I have met Mr. Meissner on several occasions. The only time I ever spent with Mr. Meissner was approximately two days in Costa Rica.

Q I think in your affidavit that you filed in this proceeding, I think you said you had only met Mr. Meissner once.

A I have seen him on Paradise Island during the sale of -- the negotiations of -- Paradise Islands and Resorts International's properties. He was on the island but he has been on airplanes when I have been on them but basically the only time I spent with him was during this visit to Costa Rica.

Q Did you ever discuss Vencap or financing Vencap with Mr. Meissner?

A No, I never have.

Q And you have testified you did discuss Vencap extensively with Mr. Graze.

A Yes, I did.

Q Is it your testimony, Mr. Pistell, that you

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have at all times in dealing with Vencap and dealing with Vencap's investments acted in good faith?

A Yes. In my belief I have acted in complete, 100 per cent good faith.

Q You know, do you not, Mr. Pistell, that there are in this complaint allegations that you and the other named defendants, including Mr. Murphy, Mr. Taylor, our law firm, the individuals whom I have just referred, together with the corporations, conpsired to defraud the shareholders of IIT?

A I have been told that.

Q Is that a correct and fair allegation.

A In my belief it has no foundation whatever.

MR. ORAM: You may inquire.

CROSS EXAMINATION

BY MR. ANDERSON:

Q Mr. Pistell, did Conservative Capital receive moneys from Fund of Funds?

A That is correct, sir.

Q Did you make that or conduct the negotiations wi th respect to those moneys with Mr. Graze?

A Yes, I did, sir.

Q Is Fund of Funds one of the entities in the IOS complex?

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A I believe it is.

Q How much was received from Fund of Funds?

A $1 million, sir.

Q Was all of that money invested in Chibex stock by Conservative Capital?

A One hundred per cent.

Q What interest does Fund of Funds have in Conservative Capital?

A They have a call on 500,000 shares out of 2 million shares of stock.

Q What is the call price?

A Fifty cents a share, plus a note on my behalf for $1 million at interest.

Q I don't understand what a note on your behalf means.

A On the original terms of the agreement there was a five-year loan made to me personally at an interest rate of $1 million whereby that $1 million went into Conservative Capital, which in turn invested in 2 million shares of Chibex, for which the fund received an option out of the 2 million shares of 500,000 shares at 50 cents.

Q Do I understand correctly that you owe Fund of Funds $5 million personally?

A $1 million.

Q If I heard 5 million some place in that answer --

A 500,000 shares stock option.

Q Did you borrow $1 million from Fund of Funds personally?

A Yes, I did.

Q Is that the same 1 million that went into Conservative Capital?

A Yes, sir.

Q So the funds went from Fund of Funds to you personally to Conservative Capital, is that correct?

A No. I believe the funds went from Fund of Funds to Conservative Capital to Chibex with a note signed by me personally.

Excuse me. Conservative Capital -- the note is in the name of Conservative Capital, I believe.

Q Are you personally, as Richard C. Pistell, the obligor on a note to Fund of Funds?

A I believe it is Conservative Capital that is an obligor of the note to Fund of Funds.

Q Did you guarantee that note?

A I can't tell you withouit looking at that.

MR. ORAM: Mr. Anderson, we are trying to

see if we have it if it is important to you.

MR. ANDERSON: Would you,please.

MR. ORAM: Apparently we don't have it but we can get it.

MR. ANDERSON: One other thing I would like which is not here today is the New York Times article that was marked for identification yesterday.

MR. ORAM: I will look for it. Do we know it is not here?

MR. TAYLOR: I just looked for it.

MR. ANDERSON: I can certainly understand if either party here has mislaid papers since there are a great many.

We would also apppreciate the document that the witness used to refreshi his recollection yesterday.

BY MR. ANDERSON:

Q Mr. Pistell, do you have the documents that you used yesterday to refresh your recollection?

A Which ones, sir?

Q All of the documents that you used.

A Yes, I have them right in my pocket.

MR. ANDERSON: Can we have them marked.

THE WITNESS: Which ones do you want?

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MR. ANDERSON: All of them.

MR. ORAM: Only the ones you used to refresh your recollection.

Q You were reading from notes yesterday that you said to the judge, "If I could refer to my notes."

A Here. That one I haven't referred to yet.

MR. ANDERSON: I ask that the documents be marked for identification.

(Plaintiff's Exhibits 36, 37 and 38 were marked for identification.)

Q Mr. Pistell, I show you Plaintiff's Exhibit 14-31 and ask you whether or not that is a copy of the Vencap option from Conservative Capital on Chibex stock.

A I have to get some glasses, but I believe it is if that is what you say it is.

Q That gives Vencap an option in two pieces of 75,000 shares at $1.50, is that correct?

A That is correct.

Q Does Vencap have any other interest in Chibex then reflected in that exhibit?

A Yes, it has a tentative agreement. No, at this time it does not.

THE COURT: May I see that, please.

Q I take it, Mr. Pistell, that in your opinion

Chibex stock is worth more than $1 per share?

A Chibex was worth an awful lot more than $1 a share before this charge was filed.

Q Before this charge was filed?

A This lawsuit, withholding order, whatever you want to call it. The equity dropped on Chibex $3.5 million on one day on the release of the filing of this withholding order, of the equity of Chibex.

MR. ANDERSON: Your Honor, if we were at a trial on the merits I would ask to have the witness' comments stricken but I think we are going to get further today if I just let him go ahead and make his arguments.

THE WITNESS: I am not arguing; I am just answering.

THE COURT: All right.

Q Before this charge was filed did you at any time advice Dr. Meissner not to exercise the Fund of Funds' put to Vencap at $1 a share?

A You keep calling this a put. It was an agreement. I have never talked to Dr. Meissner about it. The only one I ever talked to about it was Mr. Graze.

Q I stand corrected.

Did you advise Mr. Graze not to exercise its rights under that agreement?

A I advised Mr. Graze at one point to hold on to that stock and the fund it was in and the call that it was on because I thought it would be worth a lot more in the future, and advised him so, that is correct.

Q What fund was it in?

A That was in FOF Propriety, whatever it is, I believe.

Q When you advised Mr. Graze to hold the Chibex stock in Fund of Funds Proprietary, were you acting in the best interest of the stockholders of Vencap?

A In my opinion, I was acting in the best interest of FOF Proprietary and I had some other negotiations on at that time for the funds of Vencap which I thought could be utilized as well as picking up the 500,000 shares that would be used to exercise that option.

Q Did those other negotiations come to fruition?

A At that time they did not.

Q Have they since come to fruition?

A They are starting to come to fruition.

Q Just generally, would you identify those negotiations?

A No. 1, at this time there are various mining properties, natural resource properties, which are starting

to come to fruition and could be closed if I did not have this order upon us.

Q How do these various mining properties and concessions relate to Fund of Funds Proprietary?

A You are talking about Conservative Capital or are you talking about IIT and Vencap?

Q Let's go back.

If I recallyour testimony correctly, you said you advised Mr. Grace not to exercise his rights under the agreement which I will characterize as a put because you had other negotiations going on.

A That is correct.

Q What were those other negotiations?

A Those other negotiations were to buy shares in mineral interests in Canada and Mexico.

Q And those negotiations have not as yet come to fruition, is that correct?

A That is correct, but they are ready to come to fruition.

Q Did those negotiations in any way involve Mr. Graze or Fund of Funds Prop?

A Not Mr. Graze or Fund of Funds Prop. They would have been for Vencap.

Q I would like you to refer to Plaintiff's

Exhibit 33, which is the Vencap stock transactions, which is made up principally from a list furnished by your counsel.

A Yes.

Q Mr. Pistell, you recall the testimony yesterday with respect to the meanings of direct ownership, indirect ownership and beneficial ownership?

A That is correct, sir.

Q And you have had extensive experience with securities laws in the United States as a businessman, is that correct?

A Yes, I have.

Q Would you indicate by circling the securities on Exhibit 33 every security in which you own directly, indirectly or beneficially more than 5 per cent of the outstanding equity?

MR. ORAM: Your Honor, I object. I think those are legal terms and this witness is not a lawyer. Reliance on Mr. Pistell's previous hearing testimony does not seem to me to solve that problem.

THE COURT: I think I will allow it. Overruled.

Q Are there any on the first page?

A That I own personally?

Q Directly, indirectly or beneficially.

A When you say beneficially you are talking about Vencap?

Q I am talking about Vencap or Mrs. Pistell or I am talking about your children, I am talking about yoru parents, if they live in your household. I am talking about trusts of which you are the settlor or the beneficiary.

A I have no parents. My wife's trusts are run by trustees so I don't know what they have. My children's trusts are run by trustees so I don't know what they have. So I can't point to one thing on here where I personally own 5 per cent or more of any of these companies myself, or my family.

Q Other than to the extent through Vencap?

A Right.

Q If you know, what is the current market price for Lonhro?

A I don't know today. That is on the London Stock Exchange.

Q Would it be approximately $1.29 to $1.39?

A I wouldn't know. It's in pence, and I didn't figure it out. London hit the lowest rate of the day yesterday.

Q Are you aware that the Lonhro shares shown on Exhibit 33 are worth 94,000 --

A It might be worth more; it might be worth less. I donAt know. I know it's a wonderful company. I have visited the company, I visited with the president, the chairman, I know the operations. I have met with top management and I have full confidence in the management for the future.

Q You were present here yesterday when Mr. Taylor -- I am sorry -- when Mr. Murphy testified with respect to Turks & Caicos Airways?

A That is correct, sir.

Q And he said that was worth about $1.54 a share, if I remember his testimony.

A That was Mr. Murphy's testimony.

Q You don't have any reason to doubt the accuracy of Mr. Murphy's testimony, do you?

A No, but I could have it basically a zero on that. I believe we have 90,000 shares of stock, and when we put the $660,000 into Outer Island Airway, $60,000 was a fee. We took the fee and reinvested it in Outer Island Airway. We got out fee back and received our Turks & Caicos shares for nothing and the stock was just split 14 for 1.

Q I show you Plaintiff's Exhibit 14-19, which is a letter from Mr. Glavin, and ask you whether that shows that you bought Turks & Caicos for $62,000.

A No, that is not reflected correctly. That is $62,000 which was basically a commission which we reinvested in Outer Island Airway's securities, and when Outer Island Airway was bought back, we reinvested the $62,000 in Turks & Caicos Island. So basically our cost on the Turks & Caicos stock is zero.

Q Accepting Mr. Murphy's testimony yesterday, is it accurate to say that three out of the four securities presently held in your portfolio are shown on the books of the company as a loss position?

A No. 1, Universal Oil Products we don't own any more.

Turks & Caicos Airlines is on the books for $62,000. It was just split 14 for 1, but we earned that interest out of the commission we received for the original placement on Outer Island Airway. That stock cost us nothing.

The stock above that, Lonhro, I do not know the exact cost on that today. Our basic position for having that stock, it has the largest, richest gold mine in the world and we want to be in bullion at the moment.

The first stock on the list is Lincoln American Corporation, which I testified in this court when we first did Vencap, and we still hold the stock because we believe in the future.

Mr. Elliot, my old partner, had a great saying: "Patience is the virtue of an ass, a good husband and successful speculator."

Q As of today, on Lincoln American there is an unrealized loss of some $340,000, is that correct?

A If I may get my notes out on Lincoln American, which you can have afterwards --

Q Would you answer my question.

A That is correct.

Q Now you may proceed.

A If I may.

In the year 1972 I became chairman of the Cobourn Corporation, which then became Lincoln American Corporation. For the year 1972 the company had a consolidated net loss of $3,792,227.

The year of 1973 the company reported a profit of $629,000 -- 692,000 after provision for federal income taxes.

It is my estimation that this company will show a profit of approximately $4 million. Part of

that would be nonrecurring, but I would say 50 to 55 per cent would be from operations.

There are approximately 5.1 million shares outstanding at the minimum and the book value -- when we talk about book value, net book value, asset book value -- is $6.05 a share.

This is typical of a turnabout situation which takes a little time, but as you know after the debacle of equity funding all insurance company stocks have not reacted well this year.

It also states I gave up my job, my salary and my 100,000-share stock option to take the job of Vencap.

(Plaintiff's Exhibit 39 was marked for identification.)

BY MR. ANDERSON:

Q I take it as the principal operator of Vencap you know that as of April 30th your net realized security losses were $109,000, is that correct?

A That is approximately correct.

Q So we have then unrealized losses which come up to date -- how much did you lose when you sold Universal Oil Products?

A I don't know that we lost anything. I don't

have the other side of the sales slip. We might have lost a coin, commissions, what have you.

Q So as of today, if you consider only -- as of today you have unrealized losses of approximately $330,000, is that correct?

A That would be true if you took in just what shows on the sheets, which I consider infinitesmal, that I consider in this type of market.

Q You mean there are other securities?

A Turks & Caicos Airlines, options on Chibex stock.

Q Turks & Caicos is shown on the exhibit and that is shown as a loss?

A How could it be shown as a loss when it cost us nothing? We have 90,000 shares that was just split 14 for 1 and we earned it out of a commission. How can you tell me it is a loss when it is a profitable airline with very valuable routes?

Q The books of the company show a cost basis of 62,000, is that correct?

A Yes, that was an earned commission.

Q And Mr. Murphy gave us a price of $1.54 a share?

A That is after it has been split, I believe,

14 for 1.

Q So what does that $1.54 make your total investment on Mr. Murphy's numbers?

A We have no investment. The money that was invested in Turks & Caicos Airline was the commission we received for the placement of doing the financing on Outer Island Airway.

Q Assuming Mr. Murphy's number of $1.54 a share, what would your investment in Turkes & Caicos be worth today or yesterday?

A Multiply it by 90,000 shares.

Q That is 130-or-so thousand?

A That is correct.

Q If we assume that, how far off are we with aggregate losses during the 20 months of operation and that is realized and unrealized and leaving aside the Chibex option, how far is $440,000 off?

A I don't say that you can ever have a realized or unrealized profit. You can either take a profit or a loss. If you add up the profit that we have made in our oil transactions, if you add up the profit of the evaluation of the Turks & Caicos Airline project, I don't believe we have any loss in the options in Chibex.

Q You referred, and there have been references

several times, to what has happened to mutual funds.

A That is correct.

Q Mutual funds don't go into Chibex options, is that correct?

A That is correct, but we do not consider ourselves as a mutual fund; we consider ourselves a venture capital firm.

Q The mutual fund comparison was made by your counsel, do you recall?

A The mutual fund comparison was made by our counsel.

Q If you simply take the securities transactions and you assume that you had $1.022 million as your average outstanding monthly investment in securities during the 20-month period, don't you come up with a loss on securities transactions of about 43 per cent?

A I don't. I think you have the figures right in front of you, Mr. Anderson.

Q I have to leave that calculation for his Honor.

A You said how much was invested over 20 months.

Q The average amount invested over 20 months is $1.022 million.

A What is the profit and loss on the realized

profit gains and losses?

Q If you assume that the loss is 441,000 --

A I don't. What are the realized profit and losses? You said they are 43 per cent, but they aren't.

Q I beg your pardon. I said realized and unrealized.

A Then let's take in the whole portfolio. Let's take in the unrealized profits on the securities that we have received.

Q I want you to take into consideration the securities reflected in the list of securities given to us by Mr. Glavin.

A Right.

Q On the list of securities given to us by Mr. Glavin, which is Exhibit 14-19, it shows realized losses of $10,000; is that approximately correct?

A That is correct, over 20 months on an average portfolio investment of 1 million, whatever you say it is.

Q And he also shows Turks & Caicos Airways, is that correct?

A That is correct.

Q I take it you don't agree with my assumption

that the books and records of the company are correct in showing a basis for that stock at 62,000?

A I am saying to you that the $62,000 of the cost of Turks & Caicos Airline was the original commission earned on the placement of Outer Island Airways.

THE COURT: But you have to have that commission to get the stock.

THE WITNESS: Judge, the stock cost me nothing because I earned it out of a commission. That was a placement fee for putting up the money. So he is sitting here telling me that I have a cost of $62,000 when I have no cost.

In other words, I earned that money out of the placement fee so I end up with 90,000 shares for nothing and Mr. Murphy evaluates it at $1.54. Times 90,000 with $1.54. Do it on the blackboard.

THE COURT: I don't think it is necessary. I think I understand Turks & Caicos.

Q You got that stock as a commission, right?

A Right.

Q That commission was $62,000?

A That is correct. That is what we call a placement fee.

Q Since you received that $62,000 placement fee,

how much of a profit do you show on Turks & Caicos?

A That stock has been split 14 for 1. It is now an IATA international air carrier. It has just received the internal routes of Haiti, and Mr. Murphy, surrounded by airline experts, puts a value on it of $1.54.

Q That would be approximately $138,000?

A That is correct.

Q So that you show an unrealized profit on Turks & Caicos of $76,000, is that correct?

A I think we are off in different directions, sir. What I am trying to say is we received --

THE COURT: I think, Mr. Anderson, we understand the situation. I don't know what the books show but I think I understand what the facts are.

Q I believe you testified that if at or about the time that IIT invested $3 million in Vencap they had made a $3 million investment in a mutual fund they would have paid a 7 to 8 per cent front-end load; do you recall that?

A That is about right.

Q Is it common for front-end loads to be on a sliding scale?

A I would say so, yes, but I don't know what the

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A I would say so, yes, but I don't know what the sliding scales are.

Q Would it be fair, or is it your best recollection from your experience as a securities analyst and a member of a New York Stock Exchange firm, that on a $3 million purchase from a mutual fund, the front-end load fee would be approximately 1-1/4 per cent?

A I haven't the slightest idea because I never bought a mutual fund in my life.

Q How did you get the slightest idea upon which you based your testimony that the front-end load would have been 7 or 8 per cent?

A Because when my wife bought some MIT, which I was looking over in her portfolio about 10 years ago, I looked at it and the front-end load was about 7-1/2 to 8 per cent.

Q How much was the front-end load on MIT at that time for a $3 million investment?

A I haven't the slightest idea.

Q How much did your wife invest?

A I don't believe that is any of your business.

Q Was ht $100?

A I am not going to answer that question unless

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the judge directs me to answer the question. I don't see what business you have of asking any of the affairs of my wife.

THE COURT: Mr. Anderson, we ought to be able to determine what the front-end load is for a mutual fund without going into the affairs of Mr. Pistell's wife.

MR. ANDERSON: I agree, your Honor. I do want to stay away from Mr. Pistell's wife.

THE COURT: I assume you say that with all due respect.

MR. ANDERSON: That is not an Andersonism, although there are some.

In view of that, since the witness raised this himself and the basis of his knowledge of the 7 or 8 per cent --

THE COURT: It seems to me these figures are figures that counsel clearly ought to be able to agree on in two minutes. I don't know that we need to take those two minutes right now.

THE WITNESS: If I may, your Honor, I don't even see why we are talking about it because we are not talking about a mutual fund; we are talking a venture capital fund, which you had an expert up here, supposedly

an expert, testifying about venture capital funds.

MR. ANDERSON: Counsel, will you consent to strike the portion of Mr. Pistell's testimony relating to the magnitude of front-end loads on investments of this magnitude?

MR. ORAM: I don't think so. I will take his Honor's suggestion that perhaps we can agree what that front-end load is.

BY MR. ANDERSON:

Q When was the most recent trip you made to Costa Rica?

A I believe it was about three or four months ago.

Q Did you see Mr. Marty Figures?

A Yes, I did.

Q Did he tell you at that time, or do you know from any source, that the San Christobol loan is in default?

A I never talked about San Christobol. I only met Mr. Figueres for 15 minutes. I said hello to him. He was in the same restaurant I was in.

Q Would you briefly describe the transactions pursuant to which the $150,000 fee, so-called San Christobol fee, was earned?

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A Yes. I have already done that in this court, but I will be more than happy if his Honor wants me to go over it.

Q Just be as brief as you can.

A The San Christobol transaction took place in, I believe, 1972. It was a financing for equipment to go in a plant making basic products out of sisal and prefabricated housing.

Q It was a loan?

A I don't know what form it was.

THE COURT: Who provided the funds?

THE WITNESS: I do not know.

Q It was one of the IOS entities?

A I can't answer that today for you.

Q You do know that you got a fee?

A I got a fee.

Q And you got that fee at the Bahamas Commonwealth Bank in Nassau?

A That is correct.

Q Who handed you that fee?

A Marty Figueres.

Q Did he give you cash or a check?

A I can't remember that either. I think it was a check.

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Q Was there a closing going on at that time?

A Yes, there was a closing.

Q And you don't know the parties to the closing?

A No, I do not.

Q I believe you testified yesterday that you took Warner Communications from $1 million to 500 million, is that correct?

A That is not correct. I believe I told you I helped finance Capital Cities Television.

Q And that went from 1 million to 500 million?

A I believe that the first equity financing on that was $1 million. I believe our loss for the first year was $1.3 million. I believe today there are 6 to 7 million shares trading on the New York Stock Exchange. The last time I looked at it it was $50 or $60 a share.

Q How many years did it take to get from 1 million to 500 million?

A I would say over a period of 10 to 12 years. As a matter of fact, the years go by so quickly, I can't really answer the question accurately.

When I say I did that, to make it perfectly clear, I was the financial man. I was the so-called

entrepreneur. I was not the day-to-day management, running the television and radio stations.

Q But you are the day-to-day management of Vencap?

A I am not the day-to-day management of Vencap. When we go into a venture we hire top management in each field we go into. I act merely as the financial conduit and the financial advisor.

Q Are you the manager of Vencap?

A Yes.

Q And you have the assistance of Mr. Blackman?

A That is correct.

Q Do you have full-time assistance from anyone else?

A I have basically full-time assistance from wherever I am in the world. If I need legal help, if I need tax help, I obtain it.

Q Basically you run that show?

A That I would say is basically correct, with the help of Mr. Blackman.

Q Are there any other regular full-time employees other than yourself and Mr. Blackman?

A No, I would say not.

Q In fact, you don't even have a secretary?

A When I am in New York I am provided a secretary at the Havens, Wandless firm. When I am in Canada I use Chibex. When I am in Nassau, Bahamas I hire the secretary. We have a secretary on a day-to-day basis.

Q A secretarial service?

A Yes. We got a girl out the club that is pretty full time when I am down there using the office.

Q Do you recall testimony on your deposition that some time between April 30, 1974 and the date of that deposition $700,000 was transferred from the Bank of Commerce in New York to a bank in Canada?

A That is correct, sir.

Q Where is that $700,000 today?

A It is at the same place you served the papers on, the Royal Bank.

Q What city?

A Montreal.

Q Do you know what branch?

A The main office, I believe.

Q In whose name is that 700,000?

A I would say Intercapital.

Q Did that $700,000 come from Vencap?

A Yes, it did, and it is an interest-bearing

certificate of deposit.

Q Do you recall the use of the term "dollar funds"? Is that a term familiar to you?

A Not really.

Q Do you --

A Do you mean dollar deposits?

Q I am sorry. The question was ambiguous.

In connection with IOS matters, and particularly directing your attention to the period of time last year when you testified, were there references to the Dollar Funds, and those are capital letters, I think?

A There might have been, but I have given so many thousands of pages of testimony I would have to look back. If you refresh my memory I will try and help you.

Q Were certain of the IOS funds, to your knowledge, referred to as the Dollar Funds?

A They may have been, but I can't remember that specifically.

Q Let me see if I can help you. The funds that had their moneys invested in U. S. dollars and U. S. dollars securities were commonly known as the Dollar Funds. I take it you don't know that.

A I didn't know one fund from another; if they

German funds, French funds.

Q And it's your best recollection now that you never heard the phrase Dollar Funds?

A I have heard the phrase Dollar Funds. I have heard Dollar Funds in CDs, Dollar Funds of the Treasury Department.

Q In connection with descriptions of the various IOS funds?

A I could very easily have heard of Dollar Funds. It meant nothing to me.

Q In fact, you advised Mr. Graze to sell out the Dollar Funds, is that correct?

A That, sir, is not correct. That, sir, I have testified to in this court before Judge Stewart. The end of 1972 Mr. Graze and I had developed a great rapport and respect for each other on, shall we say, philosophies of economies and the end of 1972 I said to Mr. Graze, in our talking over, which I have testified to in this court before, that I thought that the fixed parity of currencies could not withstand the balance of payment deficits that were happening throughout the world, that I thought that the stock market was topping out, and that if I was he, he would buy Deutschemarks or yen and gold bullion if I could.

Q Do you recall testifying before Judge Stewart with respect to Japanese yen?

A Yes, I do.

Q Do you recall testifying before Judge Stewart with respect to Deutchemarks?

A I believe I did, but we can check it.

Q Do you believe you testified before Judge Stewart with respect to gold bullion?

A I believe I did.

Q There did come a time when some entity with which Mr. Graze had a relationship put $3 million into Vencap, is that correct?

A That is correct, sir.

Q Did you know then that the source of the funds used by Mr. Graze was one or more of the IOS mutual funds?

A I did not know where the funds came from.

Q And you had no idea at that time that IOS was selling mutual fund certificates to the public and investing those funds?

A What do you mean?

Q Did you have any idea?

A They were still selling securities, but I think the redemptions at that point were more than their sales.

Q You referred to MIT. That is Massachusetts Investors Trust?

A That is correct.

Q Would you describe for Judge Stewart basically how MIT works?

A It's a mutual fund.

Q Assuming Judge Stewart and I don't know what a mutual fund is, would you tell us what a mutual fund is?

A It all depends. There are various types of mutual funds. What kind would you like to talk about?

Q Let's talk about MIT.

A I have not studied MIT but let's look about them in general.

I just sas one open up for $60 million that has an investment of $200,000 in it. They all want to get into natural resources.

The average mutual fund is a pool of money put into a fund run by so-called professional security analysts with great expertise, to diversity -- in other words, if you took your dollar and could only buy one stock, they spread the risk by investing the mass of dollars through a varied portfolio.

Q These, to use your phrase, so-called pro-

fessional managers, go to the public to raise money?

A That is correct.

Q They give the persons from whom the money comes certificates?

A That is correct.

Q Like stock certificates. And those professional managers pool all of those funds, is that correct?

A That is correct.

Q And they take those funds and invest them in securities, generally speaking?

A That is correct.

Q And they take those funds and invest them in securities, generally speaking?

A That is correct.

Q The people who buy into those funds could be termed fundholders?

A That is correct.

Q And any time a fundholder wants to buy more shares he buys them from the mutual fund?

A That is correct.

Q And if he wants to sell his interest, he sells those back to the mutual fund?

A He sells them at the net liquidating value

of the day of the portfolio value.

Q Either on a buy or a sell for a fundholder there is some kind of a formula worked out to determine how much he will pay if he is purchasing and how much he will get if he is selling?

A That is correct, sir.

Q Did you know that that generally was the method of operation of the IOS funds?

A Generally I did knowe that.

Q And it wouldn't surprise you at all, would it, to know there were over 150,000 fundholders in the IIT fund?

A I don't know how many holders, but I knew there was a substantial amount.

Q A very substantial number?

A That is correct.

THE COURT: We will take a short recess.

MR. ANDERSON: Before we do, your Honor, I think it is the custom in this court that while a witness is on cross examination there is no consultation with counsel. I did not --

THE WITNESS: I was going to ask you out for a cigarette.

MR. ANDERSON: I don't smoke.

I didn't insist on that --

MR. ORAM: We have observed that rule throughout this proceeding.

(Recess.)

MR. ANDERSON: Your Honor, this is the order modifying with respect to the several items of expenditure. I think that is subject to the comments I made in the record with respect to not conceding the propriety of any of the expenditures.

BY MR. ANDERSON:

Q Mr. Pistell, do you recall testifying before his Honor at the preliminary hearing with respect to discussions with Mr. Graze relating to the United States blue chip securities?

A When you say blue chip securities, you know Consolidated Edison was a blue chip six months ago and it just passed its dividend, so there is a constantly changing theory of what a blue chip security is.

I can't recall specifically testifying to blue chip securities.

Q Were you asked questions and did you give answers with respect to blue chip securities?

A I would have to refresh my memory on it.

Q You do recall the yen and the mark but you don't

recall blue chip securities?

A I was talking about the market in general, if I recollect my testimony.

Q I take it that all during the year 1972 you were carrying on a dialogue with Mr. Graze with respect to various matters?

A That is correct, sir.

Q Among those matters were the prospective investment in Vencap, is that right?

A I would say that was not correct in the beginning. I was going to form Vencap with or without Mr. Graze or any of the IOS funds just like I was going to form and do the Chibex deal with or without any of the IOS funds.

Q But did there come a time in '72 when you discussed Vencap with Mr. Graze?

A Yes, I told him of my plan.

Q And approximately when was that?

A That is a long time ago, but I would say that would have been in June, July, August.

Q Was it before or after Vencap was formed?

A I would say it was before it was formed.

Q By one month, two months?

A I couldn't recall that exactly.

Q Just your best approximation.

A I would say that I had in mind forming Vencap at the beginning of 1972.

Q And you had a lot of philosophical discussions with Mr. Graze in the beginning of 1972, didn't you?

A I had a lot of philosophical economic discussions with Mr. Graze in 1972.

Q In those discussions wi th Mr. Graze in the early part of 1972 did you discuss your concept for the formation of Vencap?

A I can very easily.

Q And in fact you probably did?

A I told him I was going to go ahead and form a venture capital firm at some point. I can't tell you the exact date.

Q Let's go back to the concept of blue chip securities.

Do you recall on the hearing for a preliminary injunction being asked this question and giving this answer -- the question is by Mr. Kushner:

"Q In your discussions with Mr. Graze in January of February of 1972 about liqudity, did he tell you that the funds were then investing in blue chip United States securities?

"A He said that they had had a lot of securities but when the market, during 1972 or the end of 1972-3, passed over the 1040 mark I called him once and told him he ought to sell them all"?

Did you answer it that way?

A I indicated to him at that time to get out of the market completely.

Q Were you asked that question and did you give that answer?

A If that is what it says, that is what I said.

Q You don't recall?

A If that is what I said, that is what I said.

Q Do you recall?

A I can recall talking to Mr. Graze together with a lot of other people and telling him it was time to get out of the whole general stock market.

Q I take it you do not recall giving that testimony before Judge Stewart at the preliminary hearing.

A If I gave that testimony, I gave that testimony.

Q And if you gave that testimony it was true then?

A That is correct, sir.

Q To cut through this, do you recall discussions in 1972 with Mr. Graze with respect to selling the blue chip securities?

A When you talk about blue chip securities, Pennsylvania Railroad was a blue chip security five years ago. Con Edison was a blue chip security six months ago. Combustion Engineering was a blue chip security 60 days ago.

What I talked about was selling securities selling on the New York Stock Exchange or the exchanges, securities, and getting in a highly liquid position and changing from securities in the market to various currencies that I believed were going to go up.

Q And you talked with Mr. Graze about selling securities on the New York Stock Exchange, is that correct?

A Not specially on the New York Stock Exchange; on any exchange.

MR. ORAM: Your Honor, I object. I think Mr. Anderson, you are attempting to intimate something and I suggest on page 2217 of what you just read, that you ask the next question and Mr. Pistell's answer.

MR. ANDERSON: I think that is proper for

redirect.

THE COURT: Why not do it now.

THE WITNESS: What did I answer?

THE COURT: What was the next question and answer?

Q "Q Did he tell you that the funds were still purchasing blue chip United States securities?

"A He never indicated what the funds were doing on a day-to-day basis. We always talked on a philosophical monetary type of talk."

Did you give that answer?

A Yes, if that is what it says.

Q Did there come a time when Mr. Graze told you that he had in fact sold the blue chip securities?

A Not that I can remember specifically. I could remember him indicating that they were getting in a very liquid form at one time.

Q Translate "getting into a liquid form"for us, would you please?

A When you talk about translating getting into a liquid form,when you look over the complex of what these holdings were and the portfolios had everything from hotels to securities to factories -- getting cash, just like one of the leading firms in London just announced.

THE COURT: All right.

Q So Mr. Graze told you that he was getting into cash, is that correct?

A Mr. Graze indicated that he was getting in a liquid position.

Q Does that mean cash to you?

A That means cash to me.

Q Mr. Pistell, I show you Plaintiff's Exhibit 14-42B.

A Yes, sir.

Q That is the record of Vencap checks issued?

A Yes.

Q I take it with respect to the $10,000 item there to Mr. Vesco, it is your testimony that a substantial portion of that represented in effect a charitable contribution that had been made to an organization in Costa Rica, is that correct?

A That is correct, sir.

Q When was that contribution made?

A I would imagine -- I don't know when it was made.

Q What is the date of the entry?

A The date of the rntry -- and this was a check that was never written, this was a debit to my account

as we looked into it at the bank signed by Mr. Cerni. That was moneys that I had borrowed while I was in Costa Rica, because I was out of funds while I was in Costa Rica. I had been there for quite a bit of time.

Q And you borrowed those funds from Mr. Vesco?

A No, I did not. I can't say that. I don't remember who I borrowed those funds from, either Mr. Richard Clay, Mr. Vesco or Mr. Cerni.

Q Who is Mr. Richard Clay?

A Mr. Richard Clay, from what I could gather, was an engineer or plant superintendent or something.

Q With whom was he associated, if you know?

A He was associated with, I believe -- what is the name of the company in Jersey?

Q Internal Controls?

A Right. And I think he was on Mr. Vesco's staff. At that time I don't know who he was working for.

Q I understood your testimony yesterday that the $10,000 somehow related to the purchase of a farm?

A That is correct. I left and pledged -- I don't remember how much -- $5000, $6000 of my share as part of the pledge to the farm.

Q What do you mean by a pledge?

A That was my donation. It was part of a pledge that I had made to Mr. Figueres to get the money for these young children, young people to have their symphony orchestra.

Q Is"Mr. Figures" Marty Figueres?

A No, the father, President Figueres.

Q President Figueres of Costa Rica?

A That is correct.

Q I take it the balance, whether it is 4000 or so, out of the 10 were for expenses while you were in Costa Rica?

A No, they were basically presents for my wife, some antiquities.

Q What is the date again of the entry?

A That entry -- it's hard to read my own writing. What is it?

Q It looks like August 1.

A Right.

Q Does that helpyou fix the date of the donation for the Costa Rican charity?

A That was done prior to this. I had owed this money and borrowed it.

Q Approximately how long prior?

A I can't tell you whether it was a month or two months or three months.

Q Was it a matter of a day?

A No. A matter of, I would say, a month or two months.

Q It was at least a matter of a month?

A I would say so, yes.

Q Would I be correct in stating that you felt that the charitable pledge to which you referred was somehow and in some degree useful in connection with the San Christobol deal?

A Sir, if you look at my record, when I was 27 years old I set up a foundation and built a hospital called the Delaware Valley Rehabilitation Center with my own funds at that time in my life. I have always been a great giver to charity. I am a member of the Lincoln Arts Performing Services of Washington, D.C.; I have been a member of the Metropolitan Opera Association for years. I have been a major contributor to charities from the first dollar I have made.

THE COURT: Will you answer the question.

A I have had nothing to do whatsoever with the philosophy behind it and whether Mr. Graze or Mr. Vesco or anyone else had contributed wouldn't have made a bit

of difference. I was going to go out and raise the money on my own for the project.

Q Which project?

A To buy the farm for these young people for the symphony orchestra. These are young poeple from all over Central and South America and there is over a 200-piece symphony orchestra and a great contribution to the culture of the country and I think a benefit for all peoples in the world.

Q And you thought it was a great benefit for all those reasons for Vencap to make a five or six thousand dollar contribution?

A Let's get the record straight right now on that, because I have listened to that for three or four days. That was my personal donation out of my personal funds that I have testified to in this court. I had a $100,000 commission, that I was going to leave 10 to 20 thousand dollars in for the startup costs, but I also had the right to take that commission out because it was earned by me personally and it was far before the $3 million ever came in from IIT into Vencap, and I personally declared it on my own personal income tax return.

Q I take it what you are saying is you in

effect loaned this money to Vencap?

A I did not loan this money to Vencap. I put this in in the Vencap account and, as I testified in this court, I said I left 20, 25 thousand dollars here for startup costs, but it was always my understanding that I could take that $100,000 out. It was a commission earned by me but put in a company for startup costs, as I have so testified before in this court.

Q And the company was obligated to repay you?

A The company was obligated to repay me and it was income to me personally. It was income to me. It is filed on my U. S. tax return.

Q Did your U. S. tax return take a charitable contribution for the 5 or 6 thousand dollars?

A I don't believe they did because I never asked about it because it is outside the realm of the United States.

Q Let's go back. Is it your testimony that you loaned 100,000 of the 150,000 --

MR. ORAM: I object. This has been asked and answered over and over again. I think Mr. Anderson is starting to argue with Mr. Pistell.

THE COURT: We will let him ask it once more.

Q Is itYour testimony that you loaned 100,000

of the $150,000 San Christobol fee to Vencap?

A I would say,as I testified before, I did loan it to Vencap with the understanding that I could take it out of Vencap and it was my earned commission.

Q And I believe you testified that you put that $100,000 into Vencap before IIT made its investment, is that correct?

A That is correct, sir.

Q The IIT investment was made some three or four months later, is that correct?

A That is correct.

Q Is it also correct that as of the time IIT made its investment there is not one document to evidence the loan you said you made?

A There is testimony sitting right on that desk to what I said in this court two years ago.

Q Let's fix the time.

As of the date in October of 1972 when IIT made its investmentin Vencap, is it correct that there is not one document evidencing your loan of $100,000 to Vencap?

A I can't answer that question.

Q But you have instructed your counsel to furnish all of the Vencap records, is that correct?

A That is correct, sir.

Q Let's move forward to April 13, 1973 and page 2329, starting at '28. I ask you whether or not you were asked these questions and gave these answers:

"Q How much of that was for the purpose of your stock in Vencap and how much was, for example, a loan from you to Vencap?

"A Excuse me?

"Q Was all this treated as share capital?

"A Well, as a contribution, you know, as far as that is concerned, yes.

"Q The amount of yours is 20 to 25 thousand dollars?

"A As far as I remember it it was 20 to 25 thousand dollars, yes. I mean, whether it says we paid a dollar of a share here, whatever it is, that is just the amount of the payment of shares. Because to start a corporation up, there are quite a few costs, you know.

"Q Aside from this amount you mentioned of 20, 25 thousand, did you ever invest any other moneys in Vencap?

"A Did I personally?

"Q Yes, sir.

"A Well, I imagine I put a lot of money out for things at times, yes, to start the company up, but as far as the actually share purchase, it is exactly as it said it was here. I mean, I have gone out to form corporations and spent thousands of dollars and eventually ended up when the capitalization was formed of taking a thousand shares down for a dollar, you know.

"Q Would the balance be a loan from you to the company?

"A No. Just startup, you know."

Were you asked those questions and did you give those answers?

A Exactly.

Q Were your answers true then?

A Exactly.

Q Are they true now?

A Exactly.

Q I ask you to refer in Exhibit 11 to the minutes of the meeting of directors of Vencap on May 21, 1973?

A Yes, sir.

Q Do you recall being present at that meeting?

A Yes, sir. It says I was.

Q Do you recall being present?

A I recall being present. If it says I was present, I am so many places, if it says I am present, I am present.

Q Is the answer that you don't recall?

A I evidently was present.

Q So we fix the time sequence, that meeting occurred after your testimony before Judge Stewart at the preliminary hearing, is that correct?

A That is correct, sir.

Q Would it be your recollection that until May 21, 1973, there was no written evidence of a loan from you to Vencap in the amount of $100,000?

A We keep going over the subject, and so we can both help each other out, I put $100,000 into Vencap. You keep saying a loan. Basically it was my commission and my corporation at the time I put it in. I could do anything I wanted to do with it. I helped pay the startup costs of the corporation. I have never charged the company any interest on a loan. I used that at the present time as a personal checking account even though it was in a corporation, and it was always my understanding that it was my $100,000 as commission earned. As I so testified, I left 20, 25 thousand dollars in for startup costs, but after the company was funded it was

my understanding I could get my 20, 25 thousand dollars back.

Q As a matter of fact, you have taken the whole $100,000 back, is that correct?

A No, I don't believe I have.

Q When you give money to a corporation and expect eventually to have it repaid, is that a loan?

MR.ORAM: Again I must object. We have been over this and over this, and if Mr. Anderson has some purpose in continuing to characterize this --

MR. ANDERSON: Your Honor, he keeps quarreling. He used the word "loan," he said it was a loan.

A Believe me --

THE COURT: Excuse me, Mr. Pistell.

Mr. Anderson, the witness can'' tell us what the legal consequences are of a transaction. He can only describe it. I think the facts of this transaction are now before us. If there was an objection, I will sustain the objection.

Q What happened on May 21, 1973 with respect to the $100,000?

A Would you point the page out that it is on.

A "Mr. Blackman then advised me that counsel for the company had prepared an employment agreement for

Mr. Pistell" -- do you want me to read all this?

Q No. I am asking you what happened with respect to the 100,000. Use this to refresh your recollection.

A I can't find it.

Q The second sentence says, "He" -- meaning Mr. Blackman -- "also stated" --

A . . ."also stated the letter agreement relating to a fee which had been paid to the company but which Mr. Pistell was personally entitled also be prepared by counsel. Following discussions the terms of the proposed agreement, upon motion duly made and seconded, with Mr. Pistell abstraining, it was resolved that the proposed agreement between Mr. Pistell and the company, copies of which are annexec to the minutes of the meeting, are hereby authorized and approved and that the executive vice president be and here is authorized to execute and deliver said agreement to Mr. Pistell on behalf of the company."

Q That is an agreement between you and the company evidencing a $100,000 loan, is that correct?

A If that is what you say it is.

Q I am asking you.

A I haven't got it in front of me.

Yes. May, '73. There is no date on it.

Q So in May, '73 the company agreed to pay you $100,000 which was in the net amount of the fee to which you were personally entitled?

MR. ORAM: I object to that statement, or question, if it is one. It is characterizing. I don't believe that is what this document says at all.

THE COURT: Sustained.

Q Would you refer to the May, '73 document and tell what the company agreed to do?

A "The company will pay to you the $100,000 which was the net amount of the fee to which you were personally entitled. You will hold the company harmless from any liability to third parties which may be asserted against the company for brokerage, for finder's fees in connection with the transaction resulting in the payment of the fee to the company."

Q That board of directors meeting occurred seven months after IIT made its investment in Vencap, is that correct?

A That is correct.

Q It occurred approximately one month after Mr. Blackman acquired his stock interest, did it not?

A That I could not say for sure, but if you say

that is what it is, I have to go along with you.

Q I refer you again to Exhibit 11 and the minutes of the May 21st meeting and ask you if that refreshes your recollection as to when Mr. Blackman obtained his 2000 shares of Vencap?

A Yes, it does.

Q When did Mr. Blackman obtain his equity interest?

A Evidently May 21, 1973.

Q At that same meeting, Mr. Blackman proposed that a document be executed pursuant to which the company would pay you $100,000, is that correct?

A If that is what the minutes show, that is what the minutes show, but this is only for the record. As far as I could see, because it was my understanding from the very inception, the day I got the fee and earned the fee and had no other stockholders in the corporation except myself and Mr. de Reincourt, that I was entitled to my own fee.

Q If you know, how was it that Mr. Blackman knew you were entitled to that fee personally as of May 21, 1973?

A Evidently the attorneys or someone or I had told him that I earned the fee and put the original $100,000

in and was entitled back to my $100,000.

Q Did you tell him or did the attorneys tell him?

A I believe I told him and I believe he probably talked it over with the attorneys.

Q Will you identify the attorneys?

A Carson, Lawson, and I am sure that Mr. Taylor was there.

Q And you heard Mr. Taylor testify that he actually prepared the document to which we just referred, the letter agreement dated in May, about the 100,000 fee?

A If that is what he said. I don't remember.

Q At least he said their firm prepared; do you recall that testimony yesterday?

A Not really, but if that is what it is, that is what it is.

Q Mr. Pistell, I show you Exhibit 12-278, which has been referred to as the three-page memorandum.

A Yes.

Q You have seen that document before, have you not?

A Yes, I have.

Q And it is your recollection that that document was prepared some time during the month of September, 1972?

A Do I recollect it, yes.

Q Did you see a copy of it at that time?

A I probably saw a copy but at the day of closing I wasn't in the Bahamas.

Q But you provided the stationery upon which that document was typed, is that correct?

A I had to get stationery printed, yes.

Q As of September, 1972, was that document in all respects accurate and complete?

A Not being a lawyer --

MR. ORAM: Objection. I object to the language "in all respects accurate and complete."

MR. ANDERSON: We have a witness here who has testified to his extensive experience on Wall Street.

THE WITNESS: I don't know the legal mumbo-jumbo.

THE COURT: I think the question is proper as to whether or not what is stated is accurate. I certainly don't know what you mean by "complete." I think you better define what you mean as "complete."

As far as the "accurate" portion is concerned,

I have no problem with it.

Q Mr. Pistell, was Exhibit 12-278 accurate as of September, 1972?

A Not being a lawyer, I will say that it was accurate according to advice of counsel.

Q Mr. Pistell, I would like to have a direct answer.

THE COURT: I think the question is not whether counsel said it was accurate. To your knowledge, were the statements in this memorandum accurate? There may be statements in here that you just have no information on, but is there anything in here which is inaccurate, that you know is inaccurate?

A On a quick perusal, no, there is nothing I can see that is inaccurate.

Q Did you instruct counsel, your counsel, to prepare this document?

A I did instruct our counsel.

Q Did you know that the document was in fact prepared?

A I knew that there was a document being prepared, yes.

Q Did you give any instructions to your counsel as to what was to go into that document?

A I gave instructions to our counsel to what was to go in that document, the essence of it, and I believe they talked with other counsel for the other side and came up with the document.

Q Is it your testimony that the document as of September, 1972 was accurate?

A As far as I can see, it is accurate.

Q You know from your experience in the securities field that sometimes the things you don't say can be as important as the things you do say; is that fair?

MR. ORAM: Are we getting into --

A I don't quite understand that question, the thingsthat you do say are not as important as the things you don't say.

Q That was not the question.

A Then I misunderstood the question.

THE COURT: You have it backwards.

Why don't you restate the question, Mr. Anderson.

Q Do you know from your experience that things that are left unsaid are frequently as important as things that are said?

A As far as I am concerned, when I tell someone

about a situation, I try and tell them everything.

Q That is fine.

THE COURT: You accept that, Mr. Anderson?

MR. ANDERSON: Yes.

Q Using your criteria --

THE COURT: I think, Mr. Pistell -- and I know we are all anxious, including you specifically, to wind this up as quickly as we can -- I think if you don't argue with Mr. Anderson but answer his questions specifically, and if the question can be answered yes or no stick to the question and give the briefest possible answer. If you need to explain your answer Mr. Oram will make sure you have an opportunity to do so.

THE WITNESS: Thank you, sir.

Q Reviewing the three-page memorandum, Exhibit 12-278, in light of your comment about telling the whole story, did that document tell the whole story as of September, 1972?

A I believe it does.

Q Do you find a reference in 12-278 to a leading Caribbean air carrier?

A Yes, I do, sir.

Q Is that Out-Island Airways?

A Yes, that would refer, I believe, to Outer

Island Airways.

Q I am confused. Is it Out-Island or Outer Islands?

A It was Outer Islands. It is now Air Bahamas.

MR. ORAM: Mr. Anderson, as a point of information, I think it is Out-Island.

Q As I recall your direct testimony, you said that Vencap was a full-time occupation?

A That is correct.

Q Do you recall during your deposition Mr. Kushner went carefully over all of your activities during 1974.

A Yes, sir.

Q On behalf of Vencap?

A Yes.

Q And it did amount to a full-time occupation?

A Yes.

Q And he went over your activities for the year 1973?

A Yes.

Q And it was a full-time occupation?

A Yes.

Q And I take it the same is true for 1972 after the formation?

A Yes, sir.

Q Your activities during the entire 20 months of Vencap until today have been basically the same modus operandi?

A That is correct, sir.

Q Mr. Pistell, are you chairman of the board and chief executive officer of Chibex?

A Yes, I am, sir.

Q Do you recall testifying before his Honor the first day of your testimony, stating that your main interest was president and chairman of the board of Chibex?

A At that time it was, sir.

Q Has that changed?

A I would say I have a complete staff, president et cetera. Basically I act in nothing but more or less a financial capacity at this moment.

Q So when you testified that during 1972 you were full time for Vencap, that testimony was not accurate?

A No, I think that is wrong, sir, because you don't know what I had in my mind and still have in my mind.

Q Do you recall being asked these questions and

giving these answers -- page 2192:

"By Mr. Kushner:

"Q Mr. Pistell, by whom are you employed?

"A By whom am I employed?

"Q Yes, sir.

"A I am self-employed. I work for my company.

"Q What is your company?

"A Right now?

"Q Yes, sir.

"Q My main interest is I am president and chairman of the board of Chibex Mining Corporation, Ltd. in Quebec. In turn, 50 per cent of that company, approximately, is owned by Conservative Capital, of which I am a stockholder, and I am also a stockholder and work for Venture Vencap, Ltd."

A It should be Vencap.

Q Were you asked those questions and did you give those answers?

A Yes.

Q Were they true then?

A Yes.

Q I ask you whether or not you recall testifying in May of this year on a deposition -- page 88:

By Mr. Kushner:

"Q Was there any other business personnel other than -- any company other than Vencap?

"A Basically, no, because I am devoting my full time to the business of making money for Vencap. I call Chibex every day of my life to see how everything is going, but I have a management up there and people that run the company, you know."

Were you asked that question and did you give that answer?

A Yes, sir.

Q Was it true then?

A Yes.

Q You testified on direct that at the time of the loan of $590,000 from Vencap to you through Handelskredit Bank to Intercapital, that any bank in the country would have loaned you that $590,000. Do you recall that?

A I think on the figures they would have, yes.

Q At that time you were in default to a loan with Franklin National Bank?

A No. Let me just say that I had a U. S. tax lien against me so I was in default. Basically the banks

had to cover themselves with the tax lien and every one of those banks have been paid off.

Q Was Franklin National Bank one of the banks in the country that would have loaned you money at that time?

A On this oil property, I believe they would have, yes.

Q Could you give me the name of the officer at Franklin with whom you dealt?

A Peter Onthank.

Q Can you give me the names --

A The reason is that Mr. Onthank loaned me money on my signature in the past.

Q I would like to have, say, four other banks that would have loaned you money on those terms at that time.

MR. ORAM: I think the witness testified what his opinion would have been.

THE COURT: Did you talk to any other banks about the possibility of this loan?

THE WITNESS: Not really, but I think any bank in Texas would have loaned on this property.

THE COURT: Do you have any particular one in mind?

THE WITNESS: Not really. I never really talked to any of them about it.

THE COURT: When you say you think any bank in the country would have loaned you the money, it is not on the basis of talks you had with particular banks?

THE WITNESS: No, but on just the cash flow income out of the properties.

THE COURT: But you didn't talk to any particular bank?

THE WITNESS: Yes, which would have compounded my tax problem.

THE COURT: I don't see any point in getting into four banks, Mr. Anderson.

MR. ANDERSON: In light of this explanation, no.

BY MR. ANDERSON:

Q Mr. Pistell, I believe you testified that in your discussions with Mr. Graze about the $590,000 loaned to you, you said you were going to give Vencap a "carried interest" in Flag Redfern.

A By holding of Flag Redfern, yes.

Q And he suggested that in order to determine what that carried interest should be, that you call a few

people in Wall Street?

A That is correct, sir.

Q Did you call a few people in Wall Street?

A As I remember, we definitely called a few people in Wall Street.

Q Who is "we"?

A Myself. I believe Mr. Taylor was around while I was doing it and he asked me whether I talked to various people in Wall Street.

Q Is there any record of those conversations?

A No. I don't keep records of my phone conversations.

Q Could you give us the names and firms of the people you called?

A I can try and look that up.

Q Do you recall any at the present time?

A No, but I am sure I can get you a name or two.

Q Did you call two or more than two?

A I think I talked to two or three, really. As a matter of fact, I think I had one of them come up to meet me at the Havens, Wandless office.

Q That is the Vencap office?

A We have no office here. That is the Havens, Wandless office.

Q Do you remember the name of one of the individuals you talked to?

A I can't here, but I will get it for you.

THE COURT: This is the name of one of the individuals that Mr. Pistell talked to about what?

THE WITNESS: What would be a fair carry interest on a property of this size with this amount of loan.

THE COURT: Mr. Anderson, I have a meeting at 2 o'clock. I can't expect to be back before 2:30. Do you want to break now or do you want to go on a little longer?

MR. ANDERSON: I think this will be a convenient time. I am searching for an exhibit.

THE COURT: All right. We will break now.

(Luncheon recess.)

AFTERNOON SESSION

(2:30 p.m.)

(In open court.)

R I C H A R D C. P I S T E L L resumed.

CROSS EXAMINATION CONTINUED

BY MR. ANDERSON:

Q Mr. Pistell, I show you 42B, the Vencap records with respect to Bahamas Commonwealth Bank and maybe both of us need glasses. I refer you to check No. 13447.

Do you recognize the signature on that check?

A That is my signature, sir.

Q Look at 13448. Do you recognize the signature on that?

A That is my signature, sir.

Q 13447 is a check payable to you, is that correct?

A That is correct.

Q In the amount of $12,000?

A That is correct.

Q Would you check the date of that check?

A January 1st, it says, 1972.

Q Would I be correct that that must be January 1, 1973?

A It may be. It probably is.

Q Did Vencap have a checking account at the Bahamas Commonwealth Bank on January 1, 1972?

A Not to my knowledge, it didn't.

Q Immediately the next check on the sheet is December 20, 1972.

A That is correct.

Q So is it reasonable to conclude that on January 1 you kept the old year on the check that you wrote?

A That is one reason they don't allow me to write too many checks. I am not a very good bookkeeper.

Q I show you check No. 21, dated September 6, 1972, and was that signed by you?

A Yes, sir.

Q And that is in the amount of $4000 and to whom is that payable?

A I believe that is payable to -- it looks like Louise Pistell.

Q And that was your former wife at the time?

A That is correct.

Q And that is an alimony payment?

A That is correct.

THE COURT: The checks are drawn on what bank?

MR. ANDERSON: Bahamas Commonwealth Bank.

THE COURT: Is it Mr. Pistell's personal account?

THE WITNESS: This is the proceeds of the $100,000 that I put in the bank, Judge.

THE COURT: Was the account in the name of Vencap or your name?

THE WITNESS: Vencap, the corporation that I had started at that time prior to the other moneys coming in.

Q Would it be fair to say that there are a substantial number of checks here drawn for your personal purposes?

A It was the only checking account I had at the time.

Q That is the end of the personal checks?

A Yes.

MR. ANDERSON: In this folder or binder of exhibits to your affidavit, Mr. Anderson, there is one which is Exhibit L. Are the checks you are talking about nwo those that are listed in Exhibit L?

MR. ANDERSON: A number of those checks are listed in Exhibit L.

THE COURT: Not all of them?

MR. ANDERSON: I would say most of them.

THE COURT: Why not all? I am just curious.

MR. ANDERSON: The reason I can't say all, we were not able to make an exact comparison. The one thing I do know is, we have no duplications.

THE COURT: Exhibit L, as I understand it, is supposed to be a list of what?

MR. ANDERSON: Exhibit L is the Vencap accountants' -- let me get the description that was in the covering letter.

THE COURT: In the affidavit you submitted you described Exhibit L on page 9 -- I guess it is not 9, it is 10. You said Vencap's accountants have provided a detailed analysis of the money given to Pistel, Exhibit L. I am just not clear what is in and what isn't in.

MR. ANDERSON: Your Honor, the basis for the affidavit is Exhibit 16, which is a letter from Mr. Taylor to the Securities and Exchange Commission which describes the document as Vencap's accountants' statements of amounts charged to Mr. Pistell as advances and salaries.

THE COURT: Paragraph No. 1 in that letter?

MR. ANDERSON: Yes.

THE COURT: That is the letter of May 17th?

MR. ANDERSON: Yes, your Honor.

THE COURT: All right.

So that Exhibit L is that document?

MR. ANDERSON: That is correct.

THE COURT: On Exhibit L, Mr. Anderson, the letter H -- I guess it's the letter H -- appears next to several items. I don't see an explanation of what the H is.

MR. ANDERSON: There is an explanation on that exhibit that says "House," I believe.

THE WITNESS: I see it.

BY MR. ANDERSON:

Q Mr. Pistell, I refer you to Vencap check, I think it is, No. 33 to the Franklin National Bank in the amount of $1117.17, which I take it also bears your signature.

A That is correct.

Q And to the reverse side -- what is the date on that check?

A September 28, 1972, but it should be 73 -- yes, September 28, 1972.

Q And that is the correct date, is it not?

A That would be correct.

Q Would you refer to the reverse side and read us the legend that is stamped on the back of that check?

A This is"Pistell, Richard, 817 Fifth Avenue, New York City, New York."

Q That check cleared, according to the records, the Chemical Bank on October 5, 1972.

A That is correct.

Q Was the information placed on the reverse side of that check correct at the time it was placed there?

A In what do you mean?

Q Is the information stated accurate?

A I wouldn't say so, no, because at that time we had moved from 817, but our mail was still going there.

Q Would you read the written material under identifying documents?

A You can do that better than I can, I think.

Q Let's work on it together. Does it say "Air travel card"?

A Right.

Q "UA"?

A Right.

Q And you have a United Airlines travel card?

A Yes.

Q And a number following it?

A Yes, but I can't read it, really.

Q Now we have another legend and see if this is right, "Costa Rican"?

A Yes, it could be a ticket to Costa Rica.

Q Or Costa Rican driver's license?

A Yes, I had a Costa Rican driver's license.

Q Would it be fair to say that you put that $100,000 into the Vencap account because you had no personal checking account?

A Every account I had was liened in the United States at that time.

Q By?

A The Internal Revenue.

Q Does Mrs. Pistell currently have an apartment at 815 Fifth Avenue, New York City?

MR. ORAM: Objection. I don't know what that has to do with this proceeding.

MR. ANDERSON: I think it has to do with where is residence is, your Honor, and it is also a preliminary question.

THE COURT: All right.

A I don't know whether Mrs. Pistell -- we have a one-bedroom thing that the family owned. I don't

think that the family trust owns it, the children own it or Mrs. Pistell owns it. I stay there occasionally when it isn't being used. Rig ht now I am staying at the Metropolitan Club.

Q What is Mrs. Pistell's first name?

A Carol.

Q And your former wife was Louise?

A That is correct.

Q Is the telephone number at the New York City apartment 212-838-3- --

THE COURT: Do you need this?

MR. ANDERSON: There are a number of checks drawn to pay the telephone bill on Mrs. Pistell's apartment.

THE COURT: I suppose we could establish that was the fact without disclosing the number of the telephone.

THE WITNESS: Furthermore, they would be mostly business calls, I imagine.

Q Without going into the number --

MR. ORAM: Would you agree to strike the number from the record?

MR. ANDERSON: I would.

Q Mr. Pistell, is it true that a number of

Vencap checks were drawn to pay the telephone bill to the New York Telephone Company with respect to the apartment which I have just referred to as Mrs. Pistell's apartment?

A If there were any checks drawn after the date of my $100,000 fee, each one of those phone bills would have been marked either personal or business, and any business calls would have been paidfor, period.

Q Is the answer to the question yes or no?

A I would say yes.

Q Before Mr. Blackman became a stockholder in Vencap, you had a number of other prospective partners in that venture, is that correct?

A That is true, sir.

Q Was Mr. de Reincourt thefirst one?

A That is correct, sir.

Q Did Mr. de Reincourt decline to become a co-stockholder of yours in Vencap?

A Only after an article appeared in the Paris Tribune. He became a stockholder. He was willing to serve as a stockholder. He knew the circumstances and an article appeared in the Paris Herald Tribune. He is a resident of Switzerland and he said it put h im in such a position that he could no longer be a stockholder.

Q Did Mr. de Reincourt decline to become a co-stockholder with you in Vencap?

A No.

Q Approximately when did the article in the Paris edition of the Herald Tribune appear?

A I would say to the best of my memory after the charges were filed against Mr. Vesco.

Q Then I take it that Mr. de Reincourt wanted to terminate his relationship with you and Vencap?

A I wouldn't say that at all. Mr. de Reincourt is a very good personal friend of mine. He still is. But living in Geneva, Switzerland and having the Kornfeld background prior to that, then having the charges against Vesco, he thought it was unobtainable for him to stay in that position.

Q There was a word there --

A Unobtainable for him to stay in a position of a stockholder of Vencap.

Q Following some article he got out of Vencap?

A No, it was in the Paris Herald Tribune and named his name, and being a very famous world author he wanted to withdraw as a stockholder.

Q Was that before this lawsuit was filed?

A I believe it was after.

THE COURT: Which lawsuit?

THE WITNESS: This one.

Q Did Mr. de Reincourt withdraw before or after the lawsuit which is a matter of this hearing today was filed?

A It is my belief he withdrew after.

Q Is it also your belief that the filing of this lawsuit by IIT against you, your company and others had something to do with Mr. Reincourt's withdrawal?

A It was not the filing of this lawsuit. It was the filing of the major lawsuit against Vesco, et al., or whatever it was.

Q What I would like to establish is, the lawsuit that we are trying here today had nothing whatsoever to do with Mr. de Reincourt's withdrawal as a stockholder of Vencap, is that true?

A That is my belief, sir.

Q Because Mr. de Reincourt had been out of Vencap for over a year before this lawsuit was filed, is that correct?

A That is correct, sir.

Q Did you also discuss a prospective co-stockholder relationship in Vencap with a man by the name of

Rosenberg?

A Leland Rosenberg.

Q Where is he a resident of?

A Geneva, Switzerland.

Q Did there come a time when Mr. Rosenberg declined to become a co-stockholder of yours in Vencap?

A No, sir, there idd not.

Q Did you ever offer him a stock position in Vencap?

A Yes, I did, sir.

Q Did he ever become a stockholder?

A No, he did not.

Q Did his not becoming a stockholder have anything to do with this litigation today?

A No, sir.

Q Because that also occurred over a year ago, is that correct?

A That is correct, sir.

Q Did you have discussions with Mr. Benhima with respect to becoming a stockholder in Vencap?

A I had discussions with Minister Benhima.

Q Maybe you should identify him. A minister of religion?

A A minister of the African Arab League and the

man leading the negotiations between Nixon and the Arab League, and has been on television many times in the past month.

Q Did Minister Benhima ultimately become a stockholder?

A He was becoming a stockholder and was agreeable to, but he is called back into government.

Q Was the fact that he did not become a stockholder in any way relate to the litigation that is the subject matter of this hearing before Judge Stewart today?

A No, sir.

Q That too closed over a year ago.

A That is correct.

Q If the records of Vencap show Minister Benhima as a stockholder were the records incorrect or were they just undone?

A I don't think he ever became a stockholder of Vencap. I think there was one reference to where he was going to become a stockholder of Vencap when we first did the Out-Island deal, but when he was called back into government he could not take on the position.

Q Mr. Pistell, you recall during Mr. Taylor's testimony here that he referred to a cattle deal that Vencap

was working on that never came to fruition; do you recall that?

A No, sir.

Q At any rate, as of today, Vencap has never consummated any cattle transaction, is that correct?

A That is correct, sir.

Q Did Vencap look at a recreation venture with, I guess, former Senator Hadley Dean?

A Yes.

Q Did that deal come to fruition?

A No, we passed that deal by.

Q And a deal with Rosario Mines in Mexico was passed by?

A That is correct, sir.

Q And a deal involving growing crustaceans in the Caribbean through genetics has been passed by?

A We are still looking at that.

Q Has that come to fruition?

A Not yet.

Q And a land deal with a Senor Correra?

A Senior partner of Correra & Correra, Mexico City.

Q And that deal did not come to fruition?

A No, sir.

Q Mr. Correra still has $15,000 of Vencap's money, I understand?

A In escrow he does.

Q I believe that the records reflect there were expenditures of Vencap money in connection with a hotel chain in Morocco. Would that be consistent with your recollection?

A We did look at a hotel chain in Morocco.

Q And you expended Vencap funds in the course of that?

A I might have.

Q Checks to Rabat Hilton would be for what purpose?

A For looking at the hotel chain deal in Morocco.

Q And that deal did not come to fruition?

A That is correct, sir.

Q Last Friday you testified in what I believe could be characterized as rather glowing terms -- and I mean that complimentary -- with respect to a proposed mining concession in the Cameroons and a Turkish wine concession.

A That is correct, sir.

Q During the 20 months that you have been the

operating head of Vencap has any deal been consummated that would be comparable in terms of its future potential to those, the future potential you described with respect to those two?

A Excuse me?

Q Did you really do anything in the past 20 months comparable to what you told Judge Stewart you were going to do in the Cameroons?

A Have I done anything?

Q Yes.

A I have done a hell of a good oil and gas deal, yes.

Q And the total profit on the oil and gas deal is $125,000, is that correct?

A The gross profit was 200. I think we have established a very valuable concession out of Turkey, and I think we have established and have a potentially very valuable concession in the Cameroons.

Q Have those deals been consummated?

A I haven't the slightest idea because I have been sitting in this courtroom for one week.

Q Have there been any documents signed with respect to those?

A Yes, there have. We have a document signed

by the Government of Turkey for the monopoly.

Q Is that one of the documents that has been furnished?

A Yes. We also have a complete report from Dr. Tremblay from the Cameroons and we have a tentative agreement with the Cameroons where I was supposed to be this week.

If I may say something, you could look at a thousand deals before you find one good one.

Q I was looking for one good one that had been consummated between August, 1972 and June 20, 1974.

A Yes. I think we have done a very good deal in the Turkish wine deal. I think it is going to be a very valuable concession. And I think we did a very good oil and gas deal, we have done a good airline deal. I think we have done a very good setup of screening of deals. And basically you talk about 20 months. That is not a heck of a long time for start-up.

I think we have accomplished a great deal in a period of time with a very small staff.

Q How long would you say would be a reasonable time for startup?

A Giving birth to an idea, concession, build-

ing a company, can take, you could call it, a year. It's like planting a seed. How long does it take a tree to grow.

Q In other words, you can't answer the question?

A I don't think anyone in the world can.

Q Mr. Pistell, is your present investment in Vencap $2000?

A I would say that is approximately right.

Q I show you Plaintiff's Exhibit 16-3 and ask you, if you can, to describe that document, if you would, please.

MR. ANDERSON: That is the shareholder's agreement with Blackman.

A This is a shareholder's agreement with Mr. Blackman.

Q When did you enter into that agreement with Mr. Blackman?

A If you could help me out.

The date of this is May 22, 1973.

Q And that is the day after the stockholders meeting at which Mr. Blackman became a stockholder and entered into various employment contracts, is that correct?

A That is correct, sir.

Q Does that document obligate you to sell your shares in Vencap to Mr. Blackman for $2000 in the event of your termination of your employment or your death?

A I really don't know the full meaning of the contract, not having written it and not being a lawyer on the situation.

Q I am sorry. Refer to the last page, would you please, and tell me who signed that contract?

A I signed the contract.

Q Did Mr. Blackman sign it?

A Right.

And that is a valid contract between the two stockholders with Vencap?

A I would say it is if it is drawn by the attorney.

Q Which attorneys drew it?

A I would say probably Carson, Lawson, because it is done in the Bahamas.

Q I take it even though you executed that and were a party to it you are not able to tell the court the terms?

A It says you can't hypothecate or sell your stock, et cetera, and I have signed hundreds of papers

on the thing and leave it to the lawyers.

Q Do you leave it to the lawyers to make an agreement by which you will sell your stock to your fellow common stockholder for $2000?

A I wouldn't sell my stock for $2000, no.

Q However, you did leave this transaction to the lawyers?

A That is correct, sir.

Q I show you Plaintiff's Exhibit 14-2 and ask you first if you have ever seen that document before?

A Yes, I have, sir.

Q Did you sign the original of that document?

A Yes, I did, sir.

Q Is that another one of the documents that the lawyers did?

A That was done --

Q I think the answer to that question is yes or no.

A They were not done by my lawyers, no.

Q Pursuant to that document, did you agree to sell or transfer your Vencap shares at your original cost to Mr. Norman Leblanc, President, Global Holdings?

A What I did under those circumstances, I think I have testified on this before.

They called me down to the Commonwealth Bank and said that they had a tentative agreement to settle all the proceedings of the Securities and Exchange Commission, and I had no counsel around at that time, Mr. Murphy, Mr. Carson, Mr. Lawson, everybody was out of the place, but would I be willing to sell back my shares if the SEC proceedings could be settled on behalf of everybody. I also did not consult my fellow stockholder at that time.

I said in the spirit of being -- trying to help out everyone at the time, that if there could be a settlement I would be willing to go along on that gasis.

Shortly afterwards, the day afterwards, I believe, or two days later, Mr.Murphy and Mr. Carson and Mr. Lawson said I could not write that letter without the approval of my stockholder, and then I had to write another letter which said I would have to get the approval of my stockholder, and a week later I got a letter back from Mr. Leblanc saying they had not reached an agreement with the SEC and forget everything, everything was null and void.

Q Mr.Pistell, do you recall testifying that you drafted and wrote Plaintiff's Exhibit 14-2A in a room in

the Bahamas Commonwealth Bank in Nassau, Bahamas?

A Yes, sir.

Q Was that testimony true when you gave it?

A Yes, sir, it was done right in the bank.

Q And you personally did it?

A No, I didn't personally do it. One of the lawyers or one of the people dictated the letter.

Q So it is your recollection now that you did not write the letter?

A I signed the letter they asked me to to help them out in any way to stop all the lawsuits and the proceedings.

Q There was a lot of confusion there, nobody was doing the work and you wrote the letter, is that correct?

A No, I didn't write the letter. I signed a letter that they asked me to sign.

Q You wrote the letter?

MR. ORAM: Asked and answered.

A I did not write the letter. I had signed a letter that they had written or someone in the office had written saying they were trying to settle this lawsuit, would I cooperate and if they could settle the lawsuit, give the shares back of my corporation and I

said yes, I will be of any help I can.

Q Did you sign a letter saying: "I therefore offer on behalf of myself and other Vencap, Ltd. stockholders to sell these shares of Vencap, Ltd. to Global Holdings, Ltd. at the original cost"?

MR. ORAM: Your Honor, I think Mr. Pistell has testified he signed the letter and the letter is in evidence.

THE WITNESS: And I have testified to it before.

MR. ORAM: It can speak for itself.

THE COURT: May I see the document?

(Pause.)

MR. ANDERSON: Would you read back the question.

(Question read.)

THE COURT: Answer the question.

A Yes, I did.

Q Who was the other stockholder as of the date of that letter?

A I believe Walter Blackman.

Q Were you acting on behalf of Mr. Blackman when you signed the letter?

A I had not gotten in touch with Mr. Blackman

at that time. This was kind of an emergency call, an emergency meeting.

Q You testified on Friday with respect to alleged adverse impact of publicity in connection with this case; do you recall that?

A That is correct.

Q Is adverse publicity an accurate characterization?

A It is not, sir.

Q How would you characterize it?

A Adverse.

Q Was there any adverse publicity in connection with the General Host case?

MR. ORAM: I object to this. I don't see any point of it.

THE COURT: What is the point of it?

MR. ANDERSON: The point of it is this is not the first time that Mr. Pistell has been the subject of some publicity, and I think if there is to be any showing of hardship or reason why the injunction should be lifted on the basis of adverse publicity, I am entitled to bring out that there are other instances in which he has been sued and other instances -- I won't say directly comparable problems.

THE WITNESS: May I answer that?

MR. ORAM: No.

THE COURT: I don't see the relevance of it. I will sustain the objection.

I don't think we need to go into it, Mr. Pistell.

BY MR. ANDERSON:

Q Mr. Pistell, I believe you testified on Friday that there were firm orders in the United States for Turkish wines?

A That is correct, sir.

Q With whom are those orders?

A That list is in Chicago today and I do not have it available with me.

Q How many firms are on that list, or people?

A I haven't the slightest idea at the moment.

Q Is it two or 20 or 200?

A It may be three or four at the moment, but the gentlemen they are talking with today want to take the entire output of all of Turkey.

Q Who are you talking to today?

A I don't think I should for competitive reasons have to say.

MR. ANDERSON: I think in connection with

the description of a future business --

THE COURT: I don't think we need to pursue it, Mr. Anderson. I think all we know at the moment is that Mr. Pistell has a tentative arrangement to get Turnish wine and he is negotiating to find purchasers.

THE WITNESS: We have put $39,000 in it so far.

THE COURT: I think all we know is that there is a possibility here and maybe it's a good possibility. We just don't know.

THE WITNESS: Could I make a similar possibility?

THE COURT: I don't think we need to, Mr. Pistell.

BY MR. ANDERSON:

Q Would it be consistent with your knowledge of the affairs of Handelskredit Bank that their total deposits were in the range of 17 million Swiss francs?

A I wouldn't know the total deposits. That wouldn't surprise me.

MR. ANDERSON: Could I have the question read back.

(Question read.)

Q Do you recall testifying that you received

regular financial statements from Handelskredit?

A I never testified to that. I believe we got an annual report every year.

Q I stand corrected.

A I know Edmond Rothschild has a million dollars cash in it in Geneva, but that doesn't reflect what is in back of the bank.

Q So the amount of the total deposits of Handleskredit Bank is of no significance to you?

A As far as that is concerned, in Swiss private banking that means very little.

Q Do you know what is in back of Handelskredit Bank?

A I do not, but I know some of the people personally and they are very substantial people.

Q How much, as of April 30, 1974, did Vencap have on deposit at Handelskredit Bank?

A I think approximately $1.2 million, $1.3 million.

Q $1.3 million, is that correct?

A If my memory is correct.

Q How many Swiss francs is that?

A I don't know today's exchange rate.

Q About three Swiss francs to the dollar?

A I would say approximately that.

Q So that is about 5 million Swiss francs, in rough numbers?

A That would be approximately correct.

Q If Handelskredit had only $17 million in total deposits, that would indicate that Vencap was a very large depositor, is that correct?

A As far as deposits are concerned, I would imagine so, but I can't answer yes or no.

Q I am sorry. I misspoke in the last question. I said if they had a total of $17 million and I meant a total of 17 million francs. Did you understand the question that way?

A Yes.

Q Who is behind Handelskredit Bank?

A I can't tell you that. With the Swiss banking laws, you don't really know all the partners in back of the banks at all times.

Q You mean you put money into a private Swiss bank without knowing what was behind it?

A I know one gentleman and family who have a very substantial position.

Q Who is that?

A Mr. Carl Hirschman and Dr. Carl Heber.

MR. ANDERSON: Would you mark this, please.

(Plaintiffs' Exhibit 40 was marked for identification.)

Q I show you Plaintiffs' Exhibit 40 for identification which is a certified copy of an indictment in the Central District of California, United States of America against Carl W. Hirschman.

A For what purpose?

Q Is that the man to whom you have entrusted a million three hundred thousand dollars of Vencap's money?

A I don't know.

Q If Mr. Hirschman was indicted in 1968, you know nothing whatsoever about it?

A Nothing whatsoever about it because the only place I have been with him was at his home and his bank and he knows the finest top people in the world and deals with nothing but the highest people that I know of.

Q And you don't know that he has been indicted?

A No, I do not. I know he had some problems once because he sold some airplanes to South Africa.

Q Do you know whether or not he refused to appear before a grand jury in Los Angeles?

A I haven't the slightest idea.

I happen to know he is --

MR. ANDERSON: I would like to offer this.

MR. ORAM: I object to this document. There is no relevance to this proceeding that I can think of.

I don't know that the individual named in here is the same individual we have been talking about or what the purpose of the introduction is, your Honor.

THE COURT: May I see it, please.

I don't know it is the same Mr. Carl Hirschman. Even if I knew it was, I don't know that it tells me very much. This is a contempt indictment. Unless you can do more with this, Mr. Anderson, I will sustain the objection.

Q Did Vencap loan $10,000 to Mr. Jerome Allen?

A That is correct, sir. It advanced him some money against a note.

Q And you personally handled that transaction?

A That is correct.

Q You know, do you not, that Mr. Allen has had some trouble with the United States authorities?

A Yes, I do and I know Mr. Allen 15 to 18 years ago when he was one of the leading young writers in Wall Street, a securities analyst and I haven't seen him in many years and I met him getting off an airplane in Montreal and I believe he sold his business out for a very

substantial profit to either Forbes or United States Business Service at one time. Since that time he told me he had had some problems. He was trying to get back on his feet. He used to be a brilliant securities analyst when I knew him. He signed a $10,000 note. He was working on four basic pieces of financing. One was a company called Crystal Oil and Glass in Louisiana. One he tried to help me with a financing on Chibex. He also introduced me to the people who I obtained eventually through the Turkish wine concessions. He was supposed to deliver some securities to us also along with a note as collateral which he was not able to do. However, if and when the Turkish wine concessions start to go, I have agreed to reduce his note by that much, the $10,000, more or less, as a commission, and he fully disclosed the problems that he had had.

Q So that you knew he had pled guilty to mail fraud?

A I knew he had pled guilty to a charge. I don't know what charge but he said he had difficulties on recommending a stock at one time.

Q That is in connection with the Stoller-Allen Newsletter?

A I don't know what his problem was.

MR ANDERSON: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. ORAM:

Q Mr. Pistell, you have been asked whether or not you testified in matters relating to Mr. Vesco at other times. As a matter of fact, some of your testimony has been read. I am going to ask you about them.

Did you testify at a deposition at the SEC prior to the filing of the Vesco complaint?

A Yes, I did, sir.

Q Did you testify fully and completely to the best of your knowledge?

A Yes, I did, sir.

Q At the time did you supply all the documents that the SEC required of you?

A Yes, I did, sir.

Q Subsequently did you testify during a hearing before Judge Stewart?

A Yes, I did.

Q How long did that testimony take, if you recall?

A Five to eight days.

Q Were you subject to cross examination?

A I believe I was.

Q Have you testified since then recently?

A Yes, I have.

Q At that time did you provide the SEC with all the documents they required?

A Every document they asked for.

Q Have you always provided the SEC with everything they asked for and given them your full cooperation?

A I have tried to give them my full cooperation in everything they ever asked for.

Q Did you ever try to hide anything on any of those occasions?

A Never.

MR. ANDERSON: I object to that question.

THE COURT: The question is all right, Mr. Anderson. Obviously it calls for an answer which has to be the witness' own knowledge and notion of the situation and it's clearly likely that it contains some self-interest, but it is all right.

MR. ORAM: I don't have any further questions of the witness, your Honor.

THE COURT: Thank you, Mr. Pistell.

THE WITNESS: Thank you, sir.

(Witness excused.)

MR. ORAM: Your Honor, I would like at this time to renew my application which we discussed this morning for certain testimony in camera with respect to the damages

and I have been thinking since we spoke this morning of how to deal with what I take to be Mr. Anderson's problem on the necessity that he deigns to disclose everything that comes out of this hearing to his clients and his inability to guarantee that that information once disclosed to his clients wouldn't have the very effect that none of us wants it to have. It occurred to me that we might have a model to follow in this situation and I am thinking sort of of the trade secret kind of situation where there is testimony taken or exhibits examined by counsel to a designated member or members of the client and the matter is not disclosed broadly to the client.

It seems to me, your Honor, that Mr. Anderson has suggested in his cross examination that there is something of the reality that Mr. Pistell asserts and we should have an opportuntiy to present the evidence which I am confident is persuasive of the fact that there is that damage but your Honor understands the problem I have and I am seeking a solution and I suggest this one for your consideration.

THE COURT: I would like to discuss this further with counsel.

Can we meet in the robing room in about two or three minutes.

(Recess.)

(In the robing room.)

THE COURT: Have you had a chance to react, Mr. Anderson, to Mr. Oram's suggestion?

MR. ANDERSON: You know, there is an international committee set up, and I am not familiar with all the intracacies, any of the intricacies of the arrangements that the various governmental agencies have worked out among themselves for handling this entire problem and I think possibly you are even more familiar than I am with those arrangements, but I do know, and this is really without any specific refernece to this case or the possible testimony in this case at all, that there are the various authorities involved in Canada, Luxembourg and elsewhere and the receivers or liquidators, trustees, whatever they may be for the various entities, are working together and they are exchanging information and I think there is at least one major aspect of this case that we are going to go to work on that will probably generate other litigations here or elsewhere in the very near future.

Let me make up something and tell you that this is absolutely made up, I have no foundation for it except to give you an example.

The Quebec Securities Commissioner is interested in

all of this litigation. As I understand it, this testimony that would come up would come up with respect to some kind of a financing and I think Chibex is subject to the Quebec Securities Commissoner's jurisdiction and I don't think consistent with the arrangements that have been made, if there was material of significance that I could consent to holding that information.

Further, it seems to me that the affiars of Chibex are from the testimony very closely interwoven with the Fund of Funds problems and in fact there is where the real interest is. Our 75,000 or 150,000 dollar option I think is a drop in the bucket. Fund of Funds has an enormous interest, I would think, without being their lawyers, but their lawyers and whatever that is, liquidator is obviously quite interested in all of this.

THE COURT: But I wonder why you have any obligation in this lawsuit to them. It seems to me your obligation in this lawsuit is to pursue it as vigorously as you can, but not beyond that and I am not quite clear why you feel you need to protect Fund of Funds and their liquidators. They can take care of themselves, can't they?

MR. ANDERSON: Your Honor, I agree.

THE COURT: If there is information that they need

from Mr. Pistell, they have means to get it, or to try to get it.

MR. ANDERSON: Your Honor, I believe that my clients are obligated under the terms of this International Committee set up, and I haven't read those terms, but my impression is that my clients have an affirmative disclosure obligation.

THE COURT: Frankly, I don't know what the terms of that understanding are, etiher. I know generally that the committee is cooperating and working together but whether the obligations have been entered into would extend to this problem, I am not sure.

One thing that has occurred to me which I am not particularly anxious to either suggest or to adopt, but I will at least suggest it, it is not uncommon as you know in litigation for material to be submitted to a Judge to determine whether or not it should be produced during the course of discovery or otherwise.

Consistent with that procedure, perhaps I could hear from Mr. Oram what he wants to put on the record and have his explanation, ex parte, as to why he thinks it ought to be in camera, then act on that. I am not anxious to do that.

MR. ANDERSON: Despite your reluctance, your Honor,

I think that would be much preferable from my standpoint.

THE COURT: I take it what you are saying is, if I decide to do this -- first of all, that you would not object to that procedure and secondly if I concluded that the testimony in question should be kept in camera, you would abide by that and I guess you would have to.

MR. ANDERSON: Your Honor, as of this afternoon if you decide to take in camera testimony, I believe that in view of my ignorance of the obligations of my client, I would simply not be present during the taking of that testimony and ask you to seal it and not make it available to us until I had directions.

THE COURT: All right. I was going to say there is no point in my taking the testimony in camera or otherwise unless there is going to be testimony that is available to both sides.

If I take testimony which is in camera that only Mr. Pistell and Mr. Oram and I know about, there is just no point in doing it.

MR. ORAM: I would tend to agree with that.

MR. ANDERSON: I take it if you decide to take it in camera -- I don't want to downgrade what I expect the testimony to be, but I don't think that difficulties with Chibex finance has very much,if any,bearing on our

application for preliminary relief.

MR. ORAN: I think we are getting down to the point here, and we are dealing with a petition for preliminary relief. The relief if granted stays proceedings and has effects and that relief as we understand it can only be granted on the circumstances which we have discussed before.

There are, I think, three aspects with respect to the proposed Chibex financing which is of relevance here. The first is --

THE COURT: I don't know that we need to be on the record.

MR. ANDERSON: If we are going to go into it, I would just as soon not know it.

MR. ORAM: I am going to tell you --

THE COURT: You are not going to tell me the substance of the testimony. You are going to tell me the reasons.

MR. ORAM: Yes.

The company has a need for financing. The absence of the financing deals with the damages and how does it do that? If the company, for example, went out to get financing and its viability was shaken, then obviously under a document which you put in evidence this morning, the so-

called put, that could be put and obviously cause substantial damage to Vencap.

THE COURT: Which document is this?

MR. MORSE: It couldn't be.

THE COURT: What document are you talking about?

MR. ANDERSON: We are talking about the document -- Mr. Oram is talking about the document which was referred to yesterday is the put, the Fund of Funds put of 500,000 Chibex shares to Vencap at a dollar a share.

MR. ORAM: That is right. If you create a situation where it is not advantageous for the holder to keep it because it appears to be growing but in fact shrunk, you escalate the damage by putting the put to it. That makes it even worse. That is No. 1.

No. 2, there are some valuable rights that Vencap has in the Chibex situation which, we contend will be lessened or reduced in value unless the company is permitted to continue.

We also have -- there is no secret about it, that Mr.Pistell through Conservative Capital has a valuable investment and he is a named defendant and his damages result to him personally which is ascribable as any other kind of damage in this proceeding.

I think it has a 3-fold thing and I think the

element of damage, comparative damages. There is something of real concern and something the Court has to focus on and I think the only way we can fairly determine that question is to have witnesses who testify to their own knowledge as to what that damage in their judgment would be and what I am concerned about, as I suggested to your Honor this morning, the mere fact of the filing of the lawsuit, and I guess it was the notice of the lawsuit or some subpoenas or what not, plus the Dow Jones that hit in Canada, caused a great trembling because this is a business that is based on the faith and the confidence of the people involved.

I am afraid that if this testimony with respect to the Chibex operation, its need for financing and so on, or involvement of the witness that I have available is freely speculated about or gets on the Dow again or further rumors start, I will have an attempt to aid Mr. Pistell really created a larger problem for him and the only way I can suggest is to say to your Honor here is the testimony but don't make it available to the entire world.

THE COURT: When you are talking about damages, you are not talking about the amount of money Mr. Pistell would owe to the plaintiff here if ultimately on the merits liability is established.

MR. ORAM: No.

THE COURT: You are talking about, you are determining what the damages will be if a preliminary injunction will issue.

MR. ORAM: That is a critical issue, whether the plaintiff or the defendant is more severely damaged.

THE COURT: I think we all must agree that is a critical issue. It does seem to me that substantial issues have been raised here by Mr. Anderson and the other thing I have to decide is whether or not the harm is so great that the injunction should not issue. I have to determine what the harm is likely to be to each side and who is going to suffer more.

I wonder, Mr. Anderson, is there any way you can quickly determine whether you do have an obligation here to other receivers in other matters which are related but not the same?

It strikes me right off that the problem that Mr. Pistell is dealing with here on this motion for a preliminary injunction is pretty peculiar to him and that there ought to be a way to work this out so that the testimony that Mr. Oram wants to offer can be received in camera without in any way embarrassing you.

MR. ANDERSON: There are problems of dealing

with the liquidators. For one thing, it seems to me, the fact that Mr. Pistell has been able to testify in camera will immediately become known to the world. The testimony wouldn't become known but that fact will become known and if FOF or anybody else wants to go after Mr. Pistell for the same information, they have ways and means to go after it and just because we take it in camera for this litigation doesn't mean it is in camera forever if it is sought by somebody else for another purpose.

MR. ANDERSON: I assume this information one way or the other is going to be stale very rapidly. Either the financing is going to go through or it isn't.

MR. ORAM: I am dealing with the immediate question of preliminary relief. I have no desire, and nor could I possibly request that what he testifies to can never been testified to at some other time in open court.

MR. ANDERSON: Your Honor, I am confident because I know the liquidators are not together and I also know -- well, I am confident it would be well into next week before I would get a decision on this.

THE COURT: I met one of them yesterday I hadn't met before, Dr. Schiltkap. He was here yesterday but he is not here today.

MR. ANDERSON: He is on the committee.

Your Honor, I would like not to create the insoluble conundrums --

THE COURT: I don't think you are, Mr. Anderson. I think the general rule should be that the Court ought to be very reluctant to take testimony in camera except where there is a very severe need for it and where it is of interest only to the parties and not the public. It seems to me this is a difficult situation.

MR. ORAM: One thing, your Honor, I understand Chibex is a publicly held company, Canadian company and of course the publicity has a ripple effect here, and I am making this application reluctantly, your Honor, because I understand what you have said. It is the policy and the proper one that testimony should be in open court. I am only making it on the basis of what I have learned and have been informed that has happened as a result of the prior Dow Jones particularly that we have referred to and I am just concerned that this could happen again.

THE COURT: I don't know what I should do. If I decide let us say to take this testimony in camera and then Mr. Anderson decides he will not be present during the taking of the testimony. I suppose what would happen,Mr. Anderson, ifyou don't want to be here, you don't have to be but the testimony would be in the record and

I would be entitled to rely on it.

MR. ANDERSON: I believe that is correct, your Honor.

THE COURT: I don't like to do it that way. If you aren't going to pay attention to the testimony, I wouldn't have the benefit of your views on its usefulness.

MR. ANDERSON: I don't think I have any alternative now if you want to go ahead and take the testimony and I would fully understand that position because I appreciate the problem that Mr. Oram has.

THE COURT: What do you mean by that, you don't have any alternative.

MR. ANDERSON: I think becuase there are lines here that I don't know and don't understand, that I don't think I want to hear anything at this time that I am not free to disclose and I think it is in the best interest of my client overall that I do not at this time, without clearance from the clients.

MR. ORAM: Your Honor, I appreciate that we are all searching to do the right thing. I don't want to be testifying in saying what the substance of the testimony is or will be, but I understand, and I think I can say this without involving myself in that stricture, that I understand there is presently a very serious cash need in

Chibex that is immediate.

THE COURT: Frankly, one of the things that is bothering me is, I find it a little hard to visualize what this testimony is going to be which would be so important to you, to Mr. Pistell and which would -- which would be so important to keep it in camera.

I try to think of what I expect you might have in mind or he might have in mind or your witnesses might be prepared to testify about.

MR. ORAM: I can help you there, your Honor, I think in broad outline without getting into the testimony.

I have a witness available. Mr. Pistell has already raised this issue as to the damages as he sees it, but I have a witness available who has participated in Chibex financing in the past, who will testify as to the possibility of further financing of Chibex in the manner and methods that have been used in the past who was and is involved and was participating in negotiations which suddenly terminated, and I think Mr. Pistell also referred to that at the time that the news of this lawsuit came up.

I think he in broad terms would indicate with a certain amount of expertise that the continued usual type of financing for Chibex under this kindof climate would be impossible.

I have an additional problem. I cannot in fairness to that witness have his testimony in open court because he is a leading investment banker. This thihng has effected him personally, greatly. He has requested that he not be called unless his testimony can be given in this manner and my client has agreed to that and I in good conscience cannot do otherwise, so I am in a real bind and I like you, Mr. Anderson, do not want to create conundrums but I have this problem.

MR. ANDERSON: Your Honor, personal desires of a witness to remain anonymous --

MR. ORAM: They are not your problems, they are mine, Mr. Anderson, I recognize that fully. That is why I made this unusual application.

THE COURT: You have mentioned that problem before, Mr. Oram.

MR. ORAM: That is right. It is an attempt to give your Honor the best I can as the full flavor of the damage issue because I keep coming back and focusing on a very narrow point of preliminary relief and people advise me who know these companies far better than I do that the financing requirements of this company are immediate and pressing and unless we can dispose of this matter in a way that lets the company continue with its ordinary financings,

the damage will, as I suggest, escalate.

I have one further suggestion.

I would prefer to have the testimony now in camera. If that creates insurmountable problems for your Honor, I would suggest that perhaps reluctantly we argue the case now and if your Honor should decide upon hearing the arguments that the testimony that I propose is the thing that in your Honor's mind would throw the balance, that we reconsider the matter or you desire after hearing --

THE COURT: Actually that was the thought that I had in mind too. I don't think that is a very practical notion, no. I think I would like to see the whole problem at one time rather than possibly at two times.

MR. ORAM: I appreciate that. That is why I make the suggestion reluctantly.

THE COURT: I had thought about it as a possibility but I don't think it would be fair, principally to you. If I make up my mind against you, I would suppose that this additional evidence would have to be pretty extraordinary to get me to change my mind yet if I saw it all at once I might come to a different conclusion.

One of the many things that concerns me here, if the testimony or the evidence if made public is likely to be harmful in a way, that somehow suggests to me that it

ought to be made public.

In other words, if it is that important and you think it is necessary for your case -- in other words, this isn't like a trade secret which was the suggestion you made before. There it is frequently necessary to take evidence in camera because it is only important for the particular lawsuit and competitors would get a very great and unfair advantage if they got the information.

I find it hard to analogize this situation to that.

MR. ORAM: I think there is a parallel, your Honor, in that if it came about, for example, because of the inability of Chibex because of the continuation of some relief against, or the pendency of this lawsuit or whatever, to obtain financing and if it came about as a result of that that it had to suspend operations, we have then created a situation in arguing about the fairness of the preliminary relief that no matter who wins in the end, everybody is a loser.

THE COURT: What you are saying in effect is, you think this evidence will be important to me in making up my mind whether or not preliminary relief ought to be granted but if the information is made public, it may be too late.

MR. ORAM: That is exactly correct.

MR.ANDERSON: Your Honor, I think it is very important here to note that we have not asked for any preliminary relief with respect to Chibex and we have not asked for any preliminary relief with respect to Conservative Capital.

THE COURT: That is one of the reasons that I have been puzzling, as I said a moment ago, as to the nature of this evidence and why it would be so important to me at this particular issue at this time.

MR. ORAM: There is a nexus between it, at least to the named defendants in Chibex. Nobody has ever denied it. I think it is on record. The fact that this kind of venture capital business is a business built on the confidence of the people involved, their efforts --

THE COURT: Are you saying if I were to grant a preliminary injunction against Vencap, that this would have a very drastic side effect on Conservative Capital?

MR. ORAM: On Chibex, and, of course, Mr. Pistell especially who is also a named defendant.

MR. ANDERSON: Mr. Pistell is only enjoined from using Vencap's funds and Mr. Pistell has testified as to being -- he didn't use the phrase a multimillionaire, but being a man of very substantial means.

THE COURT: I have forgotten precisely what he said at the SEC hearing, but I think he said he was worth

two or three million dollars, something like that.

MR. ANDERSON: That is consistent with my recollection and your Honor, on our figures, and I believe these are accurate within a very slim margin of error, a million eight hundred thousand dollars of Vencap's money is gone. That includes 645,000 that was loaned to Mr. Pistell. There isn't a hell of a lot left.

THE COURT: Let us do this:

Do we have any more testimony or evidence?

MR. ORAM: Other than this testimony, I have none.

MR. ANDERSON: Nothing.

THE COURT: I have a bail application in about five minutes which will be a lot easier to deal with than this problem, but it will take some time, 34 counts.

Let us sleep on this and plan to talk again tomorrow morning.

My thinking at the moment continues to be as it has been, to start with the conclusion that I will not receive this evidence in camera. I think under all the circumstances, because of the problems that are present not only in this proceeding but in related proceedings that I should not receive it in camera over the objection of the plaintiff. I don't want to pursue the course which

I suggested of hearing the evidence myself then deciding whether or not I will take it in camera, especially if I know as I am told by Mr. Anderson, if I do receive it in camera, he will not pay any attention to it.

I suppose if I wanted to press the point I could do so and if he didn't want to pay attention to it, that would be his problem, but since I feel not at all clear but rather unclear, should take it in camera.

However, let us sleep on it and this is my present inclination. I don't know how I will feel about it tomorrow morning. I suspect I will feel the same way.

If any of us have bright ideas between now and then, perhaps we could work something out.

I think it goes without saying, however, for what it is worth, Mr. Oram, if I reach the point where I decide to enter a preliminary injunction, of course you can come back at me with a request that you be heard further.

The suggestion you made which neither of us liked. Of course it is still there. I don't have to give you the right to come back to me then we can do what you want to about it.

MR.ORAM: Would your Honor expect us to argue this matter tomorrow.

THE COURT: This particular matter?

MR. ORAM: Summarizing the proceedings.

THE COURT: Where we stand at the moment.

MR. ORAM: Yes.

THE COURT: If you would like to do that, it may be worth while.

I would like proposed findings and conclusions within a week to ten days.

MR. ANDERSON: Your Honor, I have an engagement tomorrow which has been scheduled for, I would say over a year. It can be broken. I would like to make this suggestion to you, that Mr. Morse and Mr. Kellner can be here in the morning. I think they know my position. As I understand it there is no more evidence to be offered except the possibility of this, so with the Court's permission --

THE COURT: If I change my mind tomorrow morning -- unless there is some particular reason why you would like to argue this tomorrow, I think I would prefer to hear your argument after I have gotten your proposed findings.

MR. ORAM: As I understand it, the temporary restraining order expires in a matter of minutes.

THE COURT: It will be reinstated.

MR. ANDERSON: That was to be my next item of business.

THE COURT: I will continue it.

I would suppose that the preparation of proposed findings here would be -- nothing is ever simple but I would suppose it could be done --

MR. ORAM: We will do it overnight if necessary. We are most anxious.

THE COURT: I do want Mr. Anderson to be present when we argue this.

What I am getting at, can we have proposed findings early next week and argument Wednesday, something like that next week?

MR. ORAM: As a personal schedule, yes.

THE COURT: Why don't we go off the record now but before we do that, I will meet with counsel tomorrow morning at 10:15.

MR. ANDERSON: Before we go off, can I make several statements I think should be made for the record?

I take it your Honor is going to continue the temporary restraining order pending a further order.

THE COURT: Yes.

MR. ANDERSON: That there are two subpoenas outstanding which we have agreed to adjourn without today. Those are ones to the Bank of Commerce and the other is to the accounting firm of Field, Tiger, Krell and I would like

to have those on continued adjournment.

THE COURT: Do I need to do something with them?

MR. ANDERSON: I just think I should state for the record that those are adjourned without return today.

THE COURT: All right.

MR. ANDERSON: There are a number of the accounting records of which copies are marked as exhibits are not always the most legible and I would like to have an arrangement with Mr. Oram that we could have access to legible copies of those accounting records during the preparation.

MR. ORAM: Whatever we have, you can have copies of.

THE COURT: We will adjourn until 10:15 tomorrow morning at which time we will consider once again this question of in camera treatment that Mr. Oram has raised.

I take it,Mr. Anderson, you won't be here and that if the conclusion is reached we should go ahead with this evidence we can go ahead in your absence?

MR. ANDERSON: Yes, your Honor, that is correct.

THE COURT: Off the record.

(Discussion off the record.)

(Adjourned to 2:00 p.m., June 21, 1974.)

IIT, an International Investment Trust, et al, etc. 74 Civ. 2504

v.

Vencap, Ltd., Intervent, Inc., etc., et al.

New York, June 21, 1974
2:00 p.m.

- - -

MR. ORAM: As the first order of business, your Honor, to continue the discussions we were having in your chambers?

THE COURT: I guess so, Mr. Oram.

I have no bright ideas and unless you have worked something out with Mr. Anderson, I think we are where we were yesterday.

MR. ORAM: Well, I haven't worked anything out with Mr. Anderson, your Honor, but I have had a little research done. I think it indicates that the propriety, particularly on a preliminary hearing of the kind of application I made is well established, and the suggestion is a difference between a hearing on the merits and a preliminary hearing such as the one we are presently involved in.

The commentators and the cases seem to indicate that where there is some suggestion by a public hearing justice will not be done, that it is perfectly appropriate in

this kind of a proceeding to have the hearing in camera, and I have these citations if they would be helpful to your Honor.

I think, and I am more and more convinced that the testimony that we wish to have taken is of importance, of substance. I am equally convinced of the necessity for having that testimony in camera.

THE COURT: Do you have a paper you would like me to look at?

MR. ORAM: I have a very rough location of notes and citations, your Honor, that was the best I could do overnight at the same time preparing for argument, but for the record, if we can follow this in some sequence, Rule 77-B, and these are the Federal Rules of Civil Procedure; is the basic rule which provides that all trials upon the merits shall be held in open court.

Then -ou move to Rule 65 which provides the injunctive provisions which makes a distinction between hearings and actual trials on the merits.

You then move to Rule 43 of the Federal Rules of Civil Procedure which give the outlines of the change in the rules and why it was design d, particularly in patent and trademark cases to prevent the old practice of having expert testimony, for example, given by means of

affidavits, having said that this is the kind of testimony that should be given in open court, the Court had to deal in subsequent rules with how, as I suggested to your Honor yesterday, you accomplish that fact without the undue risk that that kind of testimony might be to one party.

Then in 88 Corpus Secundum there is a head note which I think is useful, paragraph 38, Section 38, which discusses the statutes which obtain in most jurisdictions with respect to the public nature of hearings and trials, but which set out some examples of when that kind of general rule canbe abbrogated and the fact that if justice requires an in camera hearing, it does not do violence to the statutes.

Finally, that in 88 Corpus Secundum the notes provides that a citation of a number of cases for the general proposition that taking of certain evidence in camera in certain situations where justice cannot be properly administered without so doing does not violate statutes providing for public trials, requiring that hearings before court commissioners shall be public.

Finally in Wigmore on Evidence Section 1836, the distinction is made by this commentator that of the just grounds available for having the usual rule that such hearings be held in public, there are two that jump

to mind first, and the first is that the proceeding is only a preliminary one, or is ex parte.

I think the substance of these rules, together with the case of Birnbaum v Wilcox decided in the North District of Illinois in 1953 and which is found in 17 Federal Rules Decisions 123 -- I beg your pardon, 133, is persuasive of the fact that there are grounds in a case such as this form hearing this testimony in camera. There is no violence to the statute and it will do justice to the parties involved.

THE COURT: Do you have anything new to say on that, Mr. Anderson?

MR. ANDERSON: Your Honor, I might summarize what I think are the factors here of general applicability without relationship to the particular problem I have because of the nature of our clients.

The first is that the witness that apparently was to be called by the defense as I understand it was a witness who desired to remain anonymous. That is absolutely no reason whatsoever for having an in camera proceeding.

Secondly, if the testimony as I believe we have heard will relate to financing of a company other than Vencap in which Mr. Pistell and Mr. Blackman have an interest, that financing or lack of financing has very,

very limited relevance. We are not asking for any injunctive relief with respect to that company. We are simply asking that Vencap's money not go into this other company of which Mr. Pistell and Mr. Blackman have a 40 or 50 per cent equity interest.

Finally, your Honor, I would suggest without knowing the securities laws of Canada, whether this company be under the jurisdiction of the Ontario Securities Laws or the Quebec Securities Laws, that there may very well be a public interest in knowing just exactly what is going on.

For those reasons, in addition to the reasons I stated before I respectfully requested the Court ahdere to its earlier decision.

MR. ORAM: I have only one thing to add and that is, I would request an offer of proof in camera and having made that offer of proof, have the Court decide as to whether the request under the circumstances is justified.

THE COURT: It seems to me that the last point that Mr. Anderson made goes to the point that I was trying to articulate yesterday. That is, it seems to me that the fact that you want the testimony in camera, perhaps in a way suggests that it ought not to be in camera. Mr. Anderson's point is, if there is something going on here that is important to the issues in this case, the suggestion that it

be in camera runs counter to the general philosophy that the laws ought to be enforced come what may.

I do have this in mind. You have indicated to me, Mr. Oram, the urgency of the situation. As I have indicated, I am willing to try to deal with the urgency of the situation so I had planned to set aisde this afternoon for argument. I also indicated that I am going to be reluctant to decide this matter until I have seen the proposed findings short of a showing to me that there is an urgency which requires that I decide this more promptly.

Having all of this in mind, it seems to me quite unlikely I am likely to decide, to feel that I am in shape to decide this matter for another two weeks or so, and this leads me to wonder whether I shouldn't hear your testimony in camera, at least on a preliminary basis and if I think it ought to be made public after I have made part of the record, after I have it in camera, what I am thinking is that I would direct it be made part of the record subject to your withdraw the testimony if you don't want it made part of the record.

Do you have the witness here?

MR. ORAM: Yes, available.

THE COURT: What do you mean by available?

MR. ORAM: He is here.

THE COURT: He could testify right now?

MR. ORAM: Yes.

THE COURT: I think what I will do, I will receive this testimony in camera. Mr. Anderson, you told me what you thought you might want to do. I am directing that the testimony be taken in camera at this point. I will reserve on the question when I will keep it in camera until after I have heard the testimony and you of course can do whatever you think you need to do.

MR.ANDERSON: With your Honor's permission, I respectfully request leave to withdraw until the completion of this testimony.

THE COURT: You understand that I may conclude that I will take the testimony in camera and keep it in the record and it may then be used against you.

MR. ANDERSON: I understand that, your Honor.

Would you direct the reporter to not furnish a copy of this portion of the transcript to us.

THE COURT: Yes.

MR. ORAM: I take it for the record, your Honor, your direction includes the option on our part if you determine to make it part of the record, to withdraw the testimony?

THE COURT: Yes, if I determine it should not be in

camera, it will either become part of the record or you will withdraw it.

I take it this means that the courtroom will be cleared of anybody other than the parties and their counsel.

NOTE

PAGES 672 to 700-A inclusive IN CAMERA

The IN CAMERA testimony referred to above has been withdrawn by the defendants.

THE COURT: Would you bring back Mr. Anderson, please.

(Pause.)

THE COURT: On the basis of the testimony which I have just heard, I am satisfied at least for the time being that I will recieve it in camera.

Of course, Mr. Anderson, it is in the record, a record which is available to you if you wish to take advantage of it. I understand your point of view up to now is that you feel you should not.

I just want to make it clear, if you want to look at the record, of course you are entitled to do so. It goes without saying.

MR. ANDERSON: I understand,your Honor.

THE COURT: I amnot sure you were here when we were talking about a timetable for oral argument.

MR. ANDERSON: I was not.

THE COURT: I have a criminal case beginning at 10 o'clock on Monday and will go until 4:30 and I have a hearing in another matter at 4:30 which will take about 15 minutes. My thought would be a quarter of five we will hear oral argument in this matter.

I really think that a half hour for each side out to do it. I think I am thoroughly familiar with the facts.

I am concerned about the arguments that each of you will make, so I would suggest we plan to begin about a quarter of five on Monday and plan to spend approximately an hour.

I would like to keep it within that frame work.

If it becomes obvious that one or the other of you need more than that amount of time, perhaps we can work it out, but I would like to have that in mind.

There are two or three things that I am concerned about which I wish you would each think about in terms of preparation for the argument.

I wouldlike to know, Mr. Anderson, and I guess this also is a question that Oram can help answer, just exactly what is the situation or what your thinking is about the possibilities for the future with respect to the $3 million which was advanced by IIT to Vencap, when, how and by what means is that money likely to be restored to Vencap.

Secondly, I believe I have seen in the record or it has been told to me that IIT has only advance, or only has a relationship financially with Conservative Capital or Chibex and the figure that sticks in my mind that somebody told me or that I read was in the amount of 75 to $125,000. I would like to be reminded what that is about, if I am correct in my recollection.

I think I am also concerned, Mr. Oram, for you to

tell me the danger, the irreparable harm to your clients, that it is such that some kind of preliminary relief shouldn't be made available. This of course is what this is all about so I am sure you will h-ve that in mind.

What about the TRO? We talked about my extending it. I haven't officially done so. How should I go about doing so? I can endorse if somebody will produce it for me the pending TRO to extend it pending further order but I need to have a piece of paper that I can endorse.

I don't need to do it right this moment, Mr. Anderson. I stated on the record yesterday that I was doing so as of that time.

MR. ORAM: Your Honor, may I ask a question?

If my memory serves me correctly, the TRO is good for a period of ten days and may be extended for a period of an additional ten days for good cause shown then may be extended only with the consent of the parties. Is that my understanding?

THE COURT: You are quoting the rule correctly, Mr. Oram, but that is a rule that deals with a TRO that is entered ex parte and I am not sure. This is a question I have had many times before. I believe the rule to be that I can enter a TRO which is entered on an adversary

basis outside of that frame work.

MR. ORAM: In that case, I should acquaint myself with learning on the subject.

THE COURT: I would be delighted if you would. I think it is perfectly clear that you and I agree, that could at least do it for another ten days. You will see when you look at that rule, it talks about a TRO entered ex parte and my understanding, and I must confess the only law I know on this subject is law that Judge Stewart has created, is that a TRO which is entered after an adversary hearing and pending a decision on a preliminary injunction can be extended beyond the two 10-day periods.

Do you have any notion about this, Mr. Anderson?

MR. ANDERSON: Yes, your Honor, that is my understanding of the law, that you now have the power to extend this.

THE COURT: Where do you get that understanding, from what I have just said?

MR. ANDERSON: I must admit that the learning on the subject is Judge Stewart's learning.

We researched this last night and from Moore's under Rule 65, paragraph 6507, it says that except where there are indiscriminate extensions without consent, that there can be additional periods where there is good

cause and where the overall period would exceed 20 days, which is the two 10-day periods provided in the rule.

THE COURT: If somebody will give me the proper piece of paper to endorse, I will extend it for another ten days.

What I propose to do, I will endorse the order extending it until further order.

Mr. Oram, you will look this up and let me know if I am wrong.

MR.ORAM: I only mention it since it goes to the continued question which I think I pushed and I hope within the bounds of propriety, that we are in urgent need of a resolution of the matter.

THE COURT: I understand that.

MR. ANDERSON: Your Honor, we do not have the original order to show cause which was filed with the clerk's office and what I would propose is that we obtain that from the file room, assuming anything can be found in the file room and bring that up to chambers for appropriate endorsement.

THE COURT: If you can find that, I will be here until about 5:30.

MR. ANDERSON: We will do that immediately, your Honor.

If there is any problem with good cause, I would

state to your Honor that the evidence thus far shows that considering expenses, loans and securities losses both realized and unrealized as of this date, approximately $1,900,000 has gone out of Vencap in a period of 20 months, and I think that is nearly $100,000 a month and it would certainly warrant extending a restraining order.

MR. ORAM: Mr. Anderson --

THE COURT: I don't think we need argue that. As far as I am concerned, I am fully persuaded that I ought to extend the TRO. I think I have the power to extend it until I enter a further order.

On the other hand, either of you can come to me on very short notice to try to persuade me that I ought to do something differently.

All right, I will see you all at a quarter of five tomorrow.

MR. ANDERSON: Could I raise another question. Just because you haven't said anything while I was here about date for proposed findings, will you fix that date on Monday?

THE COURT: We can do it right now.

MR. ORAM: I would think for our part, we would try to have proposed findings on Monday at the time of the argument.

MR. ANDERSON: I don't think that is realistic. We are not going to have the transcript until Monday as I understand it. I would respectfully suggest that the proposed findings and conclusions be 5 p.m. Monday, July 1st.

THE COURT: In the normal situation, Mr. Anderson, that would be fine with me. I heard testimony this afternoon which suggested there is some urgency to this problem. Of course that testimony was not subject to cross examination so I can't rely on it as heavily as I normally would be inclined to do so.

There have been other indications, however, that time is reasonably important here and beyond that, it seems to me that having in mind that I assume you all have other clients and have other things to do, nevertheless I would suppose that the preparation of proposed findings and conclusions and proposed order here shouldn't be too time consuming. The evidence that I have heard seems to me was presented to me pretty fully in affidavits and other exhibits before I heard the testimony so that all parties, I take it, are pretty fully informed.

I think to require that proposed findings be made available to me before a quarter of five tomorrow, particularly because even if they were delivered to me first thing Monday morning, I wouldn't have a chance to look at

them. Therefore I wonder if it can be done realistically, Mr. Anderson,prior to July 1st.

MR. ANDERSON: I am sorry, your Honor, I suggested July 1st. Do I understand that you interpreted my suggestion to be to have them delivered tomorrow?

THE COURT: No, oh, no.

MR. ANDERSON: I am sorry, then I misunderstood.

THE COURT: I am suggesting we do it before July 1st and I thought I said that Monday is unrealistic.

MR. ORAM: Your Honor, I think maybe I could help Mr. Anderson.

THE COURT: One of the things that I have indicated, I am going to be at trial beginning Monday so I couldn't possibly read your proposed findings even if you gave them to me first thing Monday morning.

MR. ANDERSON: Your Honor, then I would suggest some time next Friday, a week from today.

MR. ORAM: Your Honor, I have no date with Mr. Anderson's July 1st date if I understand it is not necessary for you to remove the temporary restraining order, if that be your decision without having in front of you findings of fact and conclusions of law. If that can be done, we will submit them at your Honor's convenience and at Mr. Anderson's convenience.

THE COURT: It is my understanding that the temporary restraining order which I am now going to continue will remain in effect until I enter a further order.

MR. ORAM: Correct, your Honor. But should you come to a conclusion that defendants should prevail on the matter of a preliminary injunction, whether that ordder could be a summary order with findings and conclusions to follow.

THE COURT: Yes.

MR. ORAM: If that is the case, your Honor, I have no problem with meeting counsel's convenience and your's with respect to the findings.

I don't know if I am making myself clear.

THE COURT: I think I understand you but I think you ought to understand this. I think it is unlikely that I will want to reach a conclusion on what I am going to do about a preliminary injunction until I have seen the proposed findings and that is why I am suggesting I would like the proposed findings -- actually what I have in mind Mr. Anderson, is some time around Wednesday or Thursday of next week.

MR. ANDERSON: May we have the earlier of those two days, your Honor, Wednesday?

THE COURT: All right, we will fix the time as the

end of business on Wednesday.

If either of you find that you need another 24 hours, of course we will consider it, but let us shoot for Wednesday at 5 o'clock, proposed findings and conclusions.

MR. ANDERSON: We will have oral argument on Monday.

THE COURT: Yes.

(Court adjourned to 4:45 p.m. Monday, June 24, 1974.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Richard C. Pistell (Resumed)	539	544		

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
36	548	
37	548	
38	548	
39	557	
40	638	

June 24, 1974
2 p.m.

Before: Hon. Charles E. Stewart, Jr., D.J.

(Hearing Resumed)

THE COURT: Yes, Mr. Anderson.

MR. ANDERSON: May it please the Court. The plaintiffs are asking you at this time, your Honor, to continue the temporary restraining order until you reach a determination of this matter.

We are asking you to grant our motion for a preliminary injunction and we are asking you to appoint a receiver.

I would respectfully request that in the event the Court determines not to continue the restraint against the defendants who are presently restrained for any reason that you stay your determination pending an opportunity on behalf of the plaintiffs to appeal.

I say that as a contingency which I don't think is likely to arise.

THE COURT: I am interested, Mr. Anderson, I appreciate your consideration, but why do you ask me to

continue the restraining order?

MR. ANDERSON: Your Honor, I think that the restraining order should be continued until you have had the opportunity to reach a decision on whether or not to grant a preliminary injunction.

THE COURT: That hopefully will be within a few days, but suppose it is a long time? I am not quite sure what you are getting at when you say continue the restraining order. Do you mean forever?

MR. ANDERSON: Until you reach a decision on a preliminary injunction.

THE COURT: It seems to me what you are saying is slightly inconsistent with your desire to have immediate relief. I don't propose for a moment to delay my decision on the question of preliminary injunctive relief, but I wonder why you are willing to be so generous in terms of asking me to continue the TRO.

MR. ANDERSON: Apparently I am not making myself clear, your Honor. The TRO runs out on July first.

THE COURT: Yes.

MR. ANDERSON: If you have reached a decision on preliminary injunction by that time, of course the TRO does not need to be continued. If on the other hand you have not yet reach your determination, I would ask you to continue.

THE COURT: I see, all right. I appreciate that. I hadn't understood what you were talking about.

MR. ANDERSON: Your Honor, I would like to speak first to the question of the grant of a preliminary injunction. There are two lines of cases in this Circuit setting forth the standards for a preliminary injunction. The first line of cases I would say is the older line which requires a probabil aty of success and a showing of irreparable injury.

The second cases are those which hold that a preliminary injunction should be granted if the plaintiff has raised serious question and the balance of hardship tips in favor of the applicant for the preliminary relief.

Your Honor, we believe we meet all of the tests, or under both of those lines of case, we believe that we have shown a probability of success. We submit we have shown irreparable injury.

THE COURT: You regard the second test as slightly or any different that the amount of proof you have to show?

MR. ANDERSON: The balance of hardships, your Honor, I personally have difficulty between a showing of irreparable injury and a balance of hardships.

I would say this, that I think that on the irreparable injury point, the Court may be looking only to the party seeking the relief. The balance of hardship test I think

requires you, or may require you to look at both sides of the scales of justice, so in that sense, those tests may be different, but I think they are substantially the same.

THE COURT: Obviously the Court of Appeals doesn't think they are the same because they state them as two separate tests, and I think, perhaps, Mr. Anderson, what you have just said may be one indication of what they have in mind. All right.

MR. ANDERSON: I think the concept of balancing to me would certainly mean that you would weigh the interest of both parties here.

THE COURT: Just to speculate for a moment, and I will only take a moment.

It seems to me the Court of Appeals is saying on th one hand, you have to have a showing that it is pretty clear it is likely that the plaintiff will win.

It also seems to me that the Court of Appeals is saying, on the other hand, if you can show there are substantial issues and you don't know who will win, that in either event you are entitled to enter an injunction.

I am perfectly clear this isn't what the Court of Appeals meant to say to us, but this is what bothers me. I am not quite sure what the different tests are, but I believe by what I have been told by them in cases I have had

that there are two tests and I am groping for the solution.

You think here the two tests are what?

MR. ANDERSON: What I would say are the older line of case, they were showing a probability of success and I do think that probability of success is something more than raising serious question.

So, the first standard or test is probability of successand a showing of irreparable injury.

Now, the second test is the test of raising serious questions and having the balance of hardship tipped and in that case, I think it is easier to raise serious questions than it is to show a probability of success, but I think it may be somewhat more difficult when you balance the hardships because you have to lay the defendants' side of that case on the scales.

THE COURT: You take the first test to be, it is much more likely than not that the preliminary relief sought will be granted after a trial on the merits?

MR. ANDERSON: That is correct, your Honor.

THE COURT: And the second test I take it you are saying is, you consider everything and it is close but it is going to be more troublesome to the plaintiff than the defendant so you give the plaintiff the preliminary relief?

MR. ANDERSON: I would say, put in the context

of this case, your Honor, the second balancing of hardships, I think you have to look at the interest of Mr. Pistell in Vencap and you look at the interest of the plaintiff in Vencap and you decide which of those weighs most heavily on the scale in light of what is likely to happen if there is no relief.

In other words, the balance of hardships --

THE COURT: I think I understand you. I think that is the way I come out. I have some hypothetical notions about this that we can debate at another time.

Go ahead.

MR. ANDERSON: Your Honor, I would like to first address myself to each of these four elements in the two tests or two standards that we have talked about, and the first one is probability of success.

The three page memorandum, offerring circular or what will you that was furnished by Vencap or Mr. Pistell to Mr. Graze, we submit, has been shown on this record to be demonstrably false in very, very significant respects.

THE COURT: You say furnished by Mr. Pistell?

MR. ANDERSON: Furnished by Vencap or Mr. Pistell to Mr. Graze.

THE COURT: You mean the document which says this is what we are going to do, the prospectus in a word?

MR. ANDERSON: Yes.

THE COURT: Mr. Pistell furnished that.

MR. ANDERSON: Let me be more technically precise, your Honor.

Mr. Pistell testified before your Honor that that document was prepared by the Mr. Murphy or Mr. Taylor and mailed to Mr. Graze in London.

The testimony of Mr. Murphy at this hearing is to the contrary. I believe Mr. Murphy testified that while portions of that document were attributable indirectly to him, basically the document was prepared by the Company's vice-president and counsel in the Bahamas, Mr. Lawson.

Regardless by whom prepared and without resolving that conflict in the testimony -- well, I might foot-note at this point that Mr. Pistell's deposition testimony which is before your Honor was to the effect that the document was prepared by Mr. Murphy.

THE COURT: It was sent to whom?

MR. ANDERSON: Mr. Graze at the Incap office in London, Incap being the acronym.

THE COURT: Yes. We have no evidence as to what happened after the document was received as to what was done with it.

MR. ANDERSON: That is correct, your Honor, there

is nothing in this record except there is certainly an almost compelling conclusion that the document went to London and the three million dollars was invested. The document asks for three million. the time sequence is there.

THE COURT: I don't want to interrupt your argument, Mr. Anderson, although I guess maybe when I say that I mean I want to interrupt it, but the thing that mainly concerns me about this, how do you tie in your clients with Mr. Pistell, how do you persuade me that Mr. Pistell did something which was in conjunction with your clients to the aggravation of the IIT stockholders?

I think it is entirely conceivable, although I haven't reached this conclusion, that you can say that some of these investments were unwise but you are charging that IIT was taken advantage of by Mr. Pistell and his people and this is what concerns me.

MR. ANDERSON: Your Honor, we believe we show that the connection between Mr. Pistell and the group that was controlling the dollar funds primarily by payment, a payment shown on this record to Mr. Vesco.

THE COURT: What payment?

MR. ANDERSON: The $10,000 payment.

THE COURT: Yes.

MR. ANDERSON: We think that the terms and

conditions of the preferred stock which provide at any time on Mr. Pistell and his fellow common stockholders decision it can be redeemed out for a maximum of $3,180,000, indicates that money was put in to what they characterize as a high-risk investment, which money could, at the maximum, have had a return of $180,000. That is not $180,000 a year, that is $180,000 forever.

That, your Honor is sole imprudent, we submit to you, to show that there had to be another game that was being played and that game, we will submit to you was to rip off three million dollars from IIT and I think there are sufficient facts in this record now to warrant a finding to that effect.

The three page memorandum we submit violates the securities laws in that it does not disclose a maximum redemption price of three million one hundred eighty. Instead, it speaks of profits inuring primarily to the benefit of the preference shareholders.

The three page memorandum does not disclose that Mr. Pistell will have an employment contract pursuant to which he takes 15 percent of the profits before you get anything for the stockholders.

The three page memorandum does not disclose that the company had received a fee of, what could be either

$150,000 or a $100,000 from the San Cristobal deal and that several months after Mr. Pistell testified before your Honor, that that amount was not a loan, documents were created, put into the minutes which made it into a loan.

The three page memorandum did not disclose that Mr. Pistell would be loaned $590,000 out of company funds first, then $55,000 later.

THE COURT: On that, and I meant to ask this question before when Mr. Pistell was here and I didn't, what is the ownership of Redfern? Who owns what in Redfern, do you know?

MR. ANDERSON: Your Honor, all that is known in the record here is that Mr. Pistell has something less than a five percent interest and the other ownership, I don't know.

THE COURT: YOu mean a stockholding interest?

MR. ANDERSON: Yes, that is correct, your Honor.

THE COURT: As I recall it, one of the arguments in support of this $590,000 loan was, that the Redfern stock was behind it. Can you tell me how it was behind it, what were the circumstances?

MR. ANDERSON: Your Honor, I will tell you this. From Mr. Pistell's testimony on the deposition, the $590,000 loan from Vencap, as far as Vencap was concerned

was not collateralized, so that while this was set up for Vencap to put its money into Handelskredit Bank --

THE COURT: I think maybe I ought to ask Mr. Oram about this, but I am concerned about what is behind the $590,000 in terms of Redfern but maybe I ought to leave that for Mr. Oram.

MR. ANDERSON: So you are clear, your Honor, whatever Flag Redfern is, it is Handelskredit Bank that has it, it is not Vencap.

THE COURT: What do you mean by that?

MR. ANDERSON: The bank is holding the security.

THE COURT: What difference does that make? The security can be just as good whoever is holding it.

MR. ANDERSON: Your Honor, the securities Act point here is that there is no disclosure.

THE COURT: I would like to pass that. I want to know whether this $590,000 is in some place where we can get it.

MR. ANDERSON: Your Honor, I believe, and I underscore this as a belief and an argument that it will be virtually impossible to get that $590,000. The testimony shows that it is in a "private" Swiss bank.

The testimony indicates, and I would refer your HOnor specifically to what I will call the redoing

of the San Cristobal fee, is that this loan and collateral, what have you, is so much in Mr. Pistell's control that it is perfectly possible for him to redo these transactions in any way that he wants.

THE COURT: I will consider that, but what do you mean redoing the San Cristobal fee?

MR. ANDERSON: Your Honor, that $100,000 or $150,000 was put into Vencap in August of 1972. IIT invested three million some months later. In 1973, Mr. Pistell testified before your Honor that that fee was not a loan.

Within months after that testimony before you, there was a directors meeting of Vencap at which Mr. Blackman, who had just come on to the scene, announced that in fact the money, the hundred thousand, had been lent by Mr. Pistell to Vencap and, therefore, it should be repaid.

Your Honor, I don't know what the truth of the matter is. Whether it was a loan or it wasn't a loan. I would say that given the sequence of events here, it certainly shows that transactions are documented and characterized to suit Mr. Pistell's benst interest at the time they are done, and I would submit to your Honor, that Vencap has no security for the $590,000 loan.

I believe that that is the burden of Mr. Pistell's

testimony on his deposition and it was one of the questions that was read to him here.

On the point of security, your Honor, for these loans, assuming they would be proper without security, which I don't concede at all, there is another loan of $55,000.

The "security" for that loan is a promise by Mr. Pistell in writing that if he doesn't repay it by the end of 1974, that he will then give a mortgage on the house that Vencap bought and built in the Bahamas.

Now, a promise in the future for somebody who controls this company and these group of companies the way he does, is not worth salt. If there was to be a mortgage on the property to support the loan, there would have been a mortgage and the mortgage would have been recorded or taken whatever action is ordinarily taken in the Bahamas to provide securities.

Your Honor, so much for the security or insecurity as I would term it of these loans. I think, to go back to the three page memo on the record as it stands today, the cocument is demonstrably false and I think that has been shown on this record.

I think the next test in this standard of cases, the standard set down by the first group of cases is irreparable injuryand I will mix that a little with the balance of hardships

but we submit to your Honor, first, that Vencap has been so depleted in such a short period of time as to make apparent the incredibly large loss already sustained by the plaintiffs and the probability that if that denuding of Vencap of its assets continues for even a brief period in the future, there will be nothing left. Our estimate from the financial records that are in evidence here today is that including salary, house, advances, bonuses, expenses and loans, $1,900,000 is gone in twenty months.

That your Honor is close to one hundred thousand a month.

THE COURT: Tell me how you get the million, nine in twenty months?

MR. ANDERSON: Let me go to that in the balance of hardships if I may.

The other factor on irreparable injury is, I believ that this record shows that Mr. Pistell is virtually judgment proof. We know that he had federal tax liens against him when the money went in. We know that his loan at Franklin National Bank of some forty-odd thousand dollars was in default. We know that he had a $2,700 judgment against him which was paid off.

THE COURT: What you mean is, the Franklin National Bank is judgment proof -- I am sorry, go ahead.

MR. ANDERSON: We know that as of the date the three million dollars went in or approximately at that time he was in arrears on his alimony.

THE COURT: How do we know that?

MR. ANDERSON: There is a check written to his former wife that bears a hand written note on the back of it, I have forgotten, September and October arrears, something like that.

THE COURT: All that means is as to that check.

MR. ANDERSON: I agree, your Honor. I say at that time he was in arrears.

THE COURT: All right.

MR. ANDERSON: Not only is Mr. Pistell, we submit judgment proof, but Vencap itself is virtually judgment proof. If my $1,900,000 estimate is correct, and I think I will establish that later, then there is $1,100,000 left of which $700,000 went within the last month or so out of the Bank of Commerce in New York into a bank in Canada.

So, we submit that we have shown irreparable injury by showing the incredible rapid outflow.

THE COURT: Of course just those words, Mr. Anderson, don't mean much to me. I assume when Vencap, Mr. Pistell got the three million dollars, he got it because he

wanted to turn it around and move it out real quickly, so the fact he incredably quickly moved it out, I suppose, is why the money was furnished and why it was obtained and why it was put to work. I am not quite sure what you are telling me by the fact that there was an incredible outflow. I assume that Vencap made it clear to IIT that they wanted the money to use and the fact that Vencap used it promptly is in fact what was in contemplation.

I am not sure what you are getting at by the fact that there was an incredible outflow.

MR. ANDERSON: Your Honor, if the funds had been used for the purposes set forth in the three page memorandum, I think we would have a decidedly different case.

THE COURT: What you are really talking about is not that there was an outflow, but that it was used for the wrong purpose.

MR. ANDERSON: It is continuing to be used for the wrong purposes. It is being used, basically, to support -- not basically, it is being used, for among other things, to support Mr. Pistell's endeavors in Chibex in which he and Mr. Blackman had at one time each a fifty percent interest and which may now have been diluted because of some financing. It is being used to support him by just extraordinary amounts of expenses and advances.

THE COURT: The question of advances and expenses I am not clear about. I see from your affidavit and the exhibits attached thereto that a lot of money up to over $350,000 was presented to Mr. Pistell for reasons which I haven't heard about in the testimony.

The fact that Mr. Pistell used this money to go into Chibex or whatever, I haven't seen anything that is unlawful about this.

I am still very puzzled about all of this, Mr. Anderson, and I have reach no conclusions, but it does seem to me that at least there is this argument, that IIT in furnishing three million dollars to Mr. Pistell, acted in bad judgment, but they shouldn't have done it because Mr. Pistell is not that good a business man, but that isn't a violation of the law as I understand it.

IIT thought they had a good deal here and they gave him three million dollars and Mr. Pistell blew it.

I don't think that makes out a violation of the law.

MR. ANDERSON: YOur Honor, so that my position is very clear, IIT was in on the game. I think that is the reason that we have such --

THE COURT: That is your argument and I would like to see something that ties IIT and Pistell together

so that the allegations you make that IIT was in on the game, that IIT was putting this three million dollars in Pistell's hands so there would be a way to accomplish the overriding purposes of, I don't know whether conspiracy is the word, or of the group, I don't see it and that is what I am concerned about.

The evidence may be there and I haven't seen it yet.

MR. ANDERSON: When I say IIT was in on the game, I don't have access to, at least as far as this record is concerned, or otherwise, Mr. Graze, Doctor Meissner, Mr. Vesco and the other people --

THE COURT: I think it is all right if you used Vesco, Graze and Meissner.

MR. ANDERSON: What I submit you do have on this record is a transaction that on this record is so patently imprudent and so obviously against the best interest of IIT that you are almost compelled to the conclusion that the purpose of the payment was other than was stated in the three page memorandum.

THE COURT: That, Mr. Anderson, is putting it the way I think about it. Was it so patently imprudent that I have to conclude that there was something other than appears on the surface, and this is something I have to decide.

It does seem to me that you could argue both sides of this question. YOu can argue that here is Mr. Vencap and he has a possibility of a goldmine and he persuades Mr. Graze to put some money in a goldmine and then all of a sudden the price of gold goes out of sight.

You also have, what I think has been established in the record, that Mr. Vencap had a lot of personal problems and they got solved by this advance from IIT and this is something that has to be considered, a very substantial tax indebtedness.

I find it not an easy question, Mr. Anderson. I think we are getting close to the time that I would like to hear from Mr. Oram.

MR. ANDERSON: I would like to get to the million, nine.

I think there was another aspect to the question of whether or not this was a prudent investment or not.

THE COURT: Is that a question for me, whether it was a prudent investment?

MR. ANDERSON: I think whether it was demonstrably a sham --

THE COURT: That is a different question. I thought the question before me came down to fraud?

MR. ANDERSON: I submit on this record it is

shown to be fraud because the terms and conditions are so rediculous.

THE COURT: What you are saying is, it was so obviously imprudent that it must be suspect?

MR. ANDERSON: That is exactly right, your Honor.

Another piece of evidence in that connection is that the funds were not in fact used for the purposes set forth in the three page memo.

THE COURT: I am not sure it is conceded but it seems pretty clear to me that is so. Go ahead.

MR. ANDERSON: Let me put onthe scales Mr. Pistell's interest and on the other side, the IIT fund holders interest.

First, Mr. Pistell testified here last week that his investment in Vencap is $2,000. I think that from other testimony that is in the record, it is clear that Mr. Blackman's interest is $5,000 or something less than that. That is what he has in this.

We have an exhibit here, a buy-sell agreement or stockholders agreement between Mr. Pistell and Mr. Blackman in which they each agree to sell to the other for $5,000 in the event their employment is terminated or in the event of death.

If Mr. Pistell has agreed with Mr. Blackman to sell his stock to Mr. Blackman for $500,000 in the event of termination or employment or death, I submit to your Honor that is almost conclusive proof of the value of Vencap to Mr. Pistell.

Thirdly, on how much you should weigh Mr. Pistell's interest in the balance, is the fact that in mid 1973, he agreed to sell his interest and Mr. Blackman's interest in Vencap to Mr. LeBlanc at cost. That cost as far as Mr. Pistell's current concern is $2,000.

YOur Honor, those three pieces of evidence, I think, establish that Mr. Pistell's interest in Vencap is diminimus. You will also recall the testimony --

THE COURT: Would this also support your notion that IIT and Vencap and Pistell were in some sort of unholy agreement?

MR. ANDERSON: YOur Honor, pending discovery in this case, I haven't sorted --

THE COURT: I justwondered whether you think this supports your notion -- it seems to me that it can be argued that Pistell was a damned shrewed clever businessman who got something for almost nothing. That doesn't help me any in this case, or maybe it does or doesn't, but this case is about the allegations that you have raised that your clients were bamboozle in effect by Pistell and that is what I want to know about it.

MR. ANDERSON: Your Honor, I think that the offer to seel to Mr. LeBlanc for nothing is further proof of the fact that our clients did get bamboozled, so not only does that set a ceiling on what Mr. Pistell's interest is in all of this --

THE COURT: Sell what to Mr. LeBlanc?

MR. ANDERSON: All of the stock in Vencap. His and Mr. LeBlanc's.

THE COURT: But that wasn't for nothing. There was a consideration there.

MR. ANDERSON: Your Honor, the document reads, an offer to sell "at cost," and I submit to you in the context of a $2,000 cost and a $3,000,000 investment by IIT, the $2,000,000 is nothing.

THE COURT: You mean the $2,000?

MR. ANDERSON: I beg your pardon, yes, your Honor.

Having established that on Mr. Pistell's side here there is something like $2,000, $5,000, I would like to go to the 1.9 million.

THE COURT: All right, go ahead. You are running outof time, Mr. Anderson mainly because I have kept interrupting you and asked you to talk about things that were not part of your presentation.

Can you tell me about the million, nine, fairly

promptly because I have one more question I want to put to you.

MR. ANDERSON: I have three that you put to me the other day.

Your Honor, the exhibits show that the compensation to Mr. Pistell over the 17 -- I'm sorry, over the 20 month period, this includes salary advances and the house, have totaled $356, 000. That $17,000 a month. Professional fees, $309,000. Travel and entertainment, $58,000. General expenses, $26,000. Transportation, $35,000. American Express, office expenses, $25,000.

Those expenses total $455,000. Thatis running at the rate of $22,500 a month, so if you add Mr. Pistell's compensation of $356,000 and the expenses of $455,000, you get total expenses in a 20-month period of $811,000

Now, that comes out to be $40,000 a month.

THE COURT: May I see that piece of paper, please, or those pieces of paper?

For my convenience, would you put those figures on one piece of paper?

MR. ANDERSON: We will submit them as a prepared document.

THE COURT: All right.

MR. ANDERSON: So to date with expenses and

compensation, $811,000 is gone.

We will argue to your Honor that the $645,000 which has been loaned to Mr. Pistell is gone. The losses on securities trading and transactions shown on Exhibit 33, these are both realized and unrealized, come up to $441,000. If we take the $811,000 in expenses and salary, or expenses and compensation, the $645,000 in loans, the $440,000 on losses on securities transactions, you come up with a total of about $1,898,000 that is gone, and that, your Honor, is how I got to the $1,900,000 approximation.

I would like to say this, your Honor. I think the really important question to resolve here is the appointment of a receiver, and you ask how we could get this money back for Vencap. Well, the way that I submit, your Honor, that should be handled, is to appoint a receiver. There are a substantial number of expenses of Vencap or checks that have gone out to Vencap which can be recovered and I will give you a couple of examples on that, that the Vencap checks payable to Mr. Pistell's former wife to pay that alimony represent amounts that a diligent receiver could recover from her, because when she got a check that said "Pay to Louise Pistell $12,000," or whatever the amount was with Vencap's name on it, she knew she was not entitled to money from Vencap.

THE COURT: Maybe she spent it.

MR. ANDERSON: Your Honor, then we have to make the assumption that she too is judgment proof.

At any rate, for the recipients of checks from Vencap who had reason to know that they were not entitled to funds from Vencap, a diligent receiver could take action to get that money back into the company.

THE COURT: What you are getting at right now, have you looked at the transcript of the testimony we took in camera?

MR. ANDERSON: No.

THE COURT: And you don't plan to?

MR. ANDERSON: No, I do not.

THE COURT: Then I cannot discuss it with you, or maybe I can. It was your choice not to see the testimony.

However, for the timebeing, at least, I will respect your addition and I will not impose upon you the facts of that testimony.

As you might imagine, there wasn't anything in that testimony that was substantially surprising or new. It did suggest to me, as was suggested by the arguments in favor of proffering the testimony that there may be possibilities that dmage can be done to Vencap, Conservative Capital, Chibex and so on as a result of this proceeding and as I think I have indicated before, that, of course, is what happens in life.

On the other hand, I am not a bit anxious to unnecessarily damage anybody, and I am particularly not anxious to damage anybody if it means, Mr. Anderson, that your clients are not going to be as well off as they were before. I don't know whether this is the case. I really don't know whether this is the case.

So, my question is, where do we go from here? I hear what you have to tell me about these problems which I know are serious.

Can I hear from you, Mr. Oram?

MR. ORAM: I think I might begin from where Mr. Anderson ended. My view and this Circuit's view on preliminary injunction.

I think it is simply this: This Circuit has developed two tests, two related tests. The first is that there is probably success, that it is far more likely than not that the plaintiff will prevail in the end, and coupled with that is the possibly injury for that plaintiff.

The second test is that there is doubt as to the success because of serious and substantial material questions going to the merits and in such a case, the balance in favor of the plaintiff on the question of injury has to be substantially in his favor. In other words, they have created a seesaw, and if there is probably success, then it is perhaps

of less importance that injury to the plaintiff is demonstrated, but if there is some question, if there is substantial question on the matter of success, then there can be no question in order to issue the preliminary injunction that the injury to the plaintiff far outweighs that to the defendant.

I think I must say, your Honor, that what I have to deal with is the record only in this case. I cannot deal with other proceedings, I can't cross examine them, and I am restricting myself solely to what has been shown in this case on this record.

THE COURT: I don't think, Mr. Oram, anybody has suggested that we could go outside of the record in this case.

MR. ORAM: No, your Honor, I agree.

The first question I have to turn to, the question of jurisdiction.

It is our view that there is no personal jurisdiction of Vencap or Intercapital. These are alien corporations and under that circumstance, there has been generated no personal jurisdiction.

Then we have the question of subject matter jurisdiction which we also claim is lacking in this Court. I think we agree that the pendant claims, the State claims alleged here must rise or fall on the existence of a Federal claim. The first of those claims is diversity. In this Circuit we have no

diversity because we have an alien plaintiff, an alien defendant, so we must look to the second claim for Federal jurisdiction and that is the United States Securities laws.

We have here an alien corporation, Vencap. We have an alien plaintiff. We are attempting to apply on an extra-territorial basis, the securities laws of the United States. To do that, we have to determine first whether the alleged violation of the securities laws occurred in the United States, or it didn't occur in the United States, had the very such a significant impact on either the securities market of the United States or U.S. investors as to justify the application of the securities laws to them.

The securities transaction that we are talking about here is contained in the complaint in which it is alleged that through a violation of the securities laws, IIT sold blue chip securities, the purpose of which was to fund Vencap.

The only occurrence within the United States that this record discloses is some preliminary discussions between lawyers on drafts of documents.

Judge Frankel dealt with that question in the IOS Investment Properties against IOS in which he observed that conversations between lawyers do not result in subject matter jurisdiction.

All the other activities complained of took place

outside the United States, so we must turn to the question of whether or not there were U.S. securities holders, and your Honor, that is one of the reasons I stated and I can only deal with this record, your Honor, because it's perfectly clear on this record that there is no proof that there were any U.S. shareholders of IIT, not one and to that, your Honor, I point to page 52 of the transcript --

THE COURT: I thought there was --

MR. ORAM: Page 52 of the record --

THE COURT: We had a long list of stockholders. What was that?

MR. ORAM: That was the computer run which Mr. Rouse appeared with which we had a significant problem because he was not sure of the date.

We also clearly established that Mr. Rouse's testimony was clearly hearsay. He got it from Verney-Voltaire and he didn't know whether it was right, wrong or indifferent and I objected to the introduction of those exhibits.

"I can't assume from these documents, I can't conclude from them that there were in fact any stockholders, if that is the right word, of IIT who were U.S. residents or citizens."

THE COURT: Yes, I remember that.

If that is the state of the record, I suppose the record could be improved to show that there were stockholders as alleged in the IIT complaint, but it seems to me if there are, and if it can be shown that there are U.S. stockholders, perhaps we have a different situation from your jurisdiction argument.

Do you agree or not?

MR. ORAM: I don't, your Honor. I think you could show the presence or absence. We are dealing with a situation where there are none, but if you could show the presence of some stockholders, then you would have to take the testimony which Judge Frankel has examined rather closely and it's the significance of the impact, and I don't know at what point it becomes significant, for example, if you are dealing with securities markets in an isolated transaction, would that be a significant impact on the securities market or two stockholders. I don't know.

All I know is that here I have no United States stockholders to jurisdictional question is raised and there should be doubt as to whether United States stockholders exist.

If that is the case, that question goes directly

to the probability of success and it has been held more than once in this circuit, that if there is significant doubt as to the jurisdiction of the Court, that is sufficient reason to deny a preliminary injunction.

THE COURT: Of course that is right, and to think out loud for a moment, let's assume that it can be shown that IIT has some stockholders in this country, where does that get us?

I take it it's reasonably clear that I could make findings that IIT engaged in transactions with Mr. Pistell and that the people who were on each side of the transaction were United States citizens.

The subject matter of course is extraterritorial

MR. ORAM: You see, your Honor, I think one of the questions that we have to look at is, there are allegations of a conspiracy.

THE COURT: That is what I was getting at with Mr. Anderson.

MR. ORAM: In which the net result of that is that IIT was introduced to make the sale, which is alleged to be the nexus of jurisdiction.

THE COURT: Of course when you have allegations of conspiracy and if the conspiracy is shown to have existed, the jurisdictional problem is a lot easier.

MR. ORAM: I am not sure I am prepared to concede that, your Honor. I think, if I understand what your Honor is getting at, that if we have an allegation of securities act violation which arose by virtue of a fraud of scheme or conspiracy and there is some evidence to show that conspiracy, then we get back to the materiality of the impact on those United States shareholders that may exist or that securities market which is effected.

THE COURT: And I take it from what little I know about the law that you don't have to show much impact on many United States stockholders. In fact, there is the Travis case, I think it is, in which there were three stockholders. The impact doesn't have to be very substantial in terms of number of stockholders and number of dollars. It just has to exist.

MR. ORAM: I think, your Honor, it's clear --

THE COURT: I take it also, when you have a conspiracy, the law regards that as creating a more substantial impact than when it's just a question of one individual party.And that the fact of the conspiracy, if you find the conpsiracy, in a way broadens the concept of jurisdiction.

MR. ORAM: I think on the converse, when you are seeking to apply the laws of this country extra-

territorially, then the question of impact becomes more serious than it would in the case of a purely domestic argument and while a case may have one, two or three or ten shareholders, when we are seeking to broaden the law where obviously it was intended to go, then the impact becomes something more.

Then I come back to the principal point that on this record I don't have to reach that because I have no U.S. shareholders.

THE COURT: Because what?

MR. ORAM: In this record, there are no U.S. shareholders.

Your Honor, when you get rid of the idea of conspiracy which one case has indicated and that was the Dobb case, it has a footnote I find particularly interesting and talking of the dissenting opinion, the Court said that he uses conspiracy to suggest some sort of dirty business.

It reminds us of the prosecutor who adds a conspiracy count to strengthen an otherwise weak case.

I suggest, your Honor, that is exactly what has happened here,because if you look really at what this case is all about, this is an action for corporate waste.

THE COURT: I don't think we need to debate

that, Mr. Oam. We can argue about that question forever. I think it's also arguable that if you have a strong case which can't be proved very easily, you allege conspiracy. I don't think the distinction between conspiracy or lack of conspiracy is the thing I would like to hear about.

I would like to hear why you think, as you were about to say, why you think this is a case of corporate waste.

MR. ORAM: Your Honor, I submit that is exactly what it is, and I submit if I am correct, that this is a case that should be proceeding in the courts in the Bahamas, I don't have to speculate as to whether or not the plaintiff would succeed in that action, but I can say that if I am correct, this is not the court where the case should be tried and really what it comes down to in terms of the transaction is, Mr. Anderson has described, is whether his business judgment is better than Mr. Pistell's.

I think we ought to contrast, before we get to the specific allegations, we ought to contrast the witnesses and what the impact was of their testimony:

The first witness that the plaintiff produced was Mr. Lederer, an ex-OIS funding employee, who added a little flavor by giving us all the names of the OIS entities.

Then we had Mr. Donovan, their expert with

respect to the operation of the type of business that Mr. Pistell was running.

I think the testimony is complete that contrasting Mr. Pistell's experience with Mr. Donovan, that Mr. Pistell's idea of what that business should be deserves far more weight than Mr. Donovan's, but even that expert pointed out that the essence of this business, and what Mr. Pistell should be doing, was to develop the contacts, to do the traveling and necessarily to make the expenditures to make that business possible.

He did not find that the salary of Mr. Pistell he was taking was out of line at all. He did attempt to contrast Vencap and Vencap's operation with two funds which as far as I can determine from the testimony are totally different frcm the Vencap situation, but he did not say and could not say and would not say that Mr. Pistell's expenses in developing this business or his salary was out of line.

Professor Siegel came along to instruct us on Bahamian law, and I gather from reading his testimony that what he told us was, that a set of facts dealing with corporate opportunity which would probably offend the sensibilities of anybody in the civilized world meant that a court of equity might act.

He did not find a single parallel with the cited cases with the instant case, not one whatsoever. He relied on two cases which I recall were decided over 75 years ago, but whose facts made the principle totally irrelevant to this case.

Delvanx, the liquidator testified he knew nothing other than what he read in the complaint the night before he testified.

Mr. Rouse who I referred to, attempted to show that there were United States citizens who were shareholders of IIT and Mr. Cassel at the bank was unable to link Pistell with any instructions or any sale of any securities for any purposes.

Contrasted with the plaintiffs' evidence, the defendant submitted three of the named defendants, Mr. Taylor, my partner, Mr. Murphy and Mr. Pistell. I think the substance of Mr. Taylor and Mr. Murphy's testimony was that they are lawyers, that they acted as lawyers on behalf of their clients and that they flatly denied participating or having any indication that any conspiracy existed.

Mr. Pistell took the stand, subjected himself to cross examination, likewise denied any conspiracy, explained the philosophy of Vencap, explained each of the

transactions.

I think the character of the testiomny, before we look at it in light of the scheme alleged, is important to keep in mind, your Honor.

Now, let's look at the complaint.

The essence of the complaint is that on or before May of 1972, Pistell and the other named defendants conspired to defraud IIT by causing the sale of bluechip securities.

There is no testimony by anyone to link Mr. Pistell to the sale of any securities by IIT. Mr. Pistell testified, and I believe it's in his deposition testimony, that Mr. Graze, who had developed this mutual respect for one another, had asked him to look at the IIT portfolio and he did. He asked him what would you do, and Mr. Pistell said, well, if I were you, I would get into the yen, into marks and into gold if I could. Nowhere did he say I would get into Vencap. He said yen, marks and gold if he could.

Mr. Cassel from the bank was put on the stand, I suppose, to see if a link could be determined between Mr. Pistell and the sale of the stock. At page 236 of the transcript, there is a sequence of questions and answers in which the Court participated in which he was asked

whether he chose the brokers and he answered that he didn't, that the instructions to sell were given to him from London and Dominion, and the Court asked whether or not there was anybody in particular at London and Dominion that he dealt with and he said, "I have no knowledge of that whatsoever."

There was, again, no linkage between Mr. Pistell and any of the named defendant in the sale of any of those blue chip securities.

There is further no testimony, your Honor, that links the $3 million which IIT invested in Vencap to the sale of blue chip securities. For all we know, the $3 million may have come from cash deposits already on deposit, they may have come from the sale of properties other than securities, or if they were securities sold which generated this cash, we have no testimony that what was sold was worth more than what they bought.

They may have sold Equity Funding or Pennslyvania Railroad, something else, we don't know.

You observed during this testimony, your Honor, that there has to be some connection shown between the sale of the securities and Pistell's participation in the conpsiracy and I submit to you, your Honor, on this record there is no connection whatsoever to that critical

element.

THE COURT: When you say the sale of the securities, what securities are you talking about?

MR. ORAM: I gather the same ones alleged in the complaint. The so-called blue chip securities.

THE COURT: There is no direct evidence, but I suppose it's conceivable, and for the moment I am not basing my speculation on the record, but I suppose it's conceivable that the IIT blue chips could have been sold to enable Stanley Graze to get $3 million to Mr. Pistell, and I emphasize "conceivable" because I don't see any evidence in the record that contends to support this, but I do see some evidence in the record, Mr. Oram, which makes me stop and think, and I don't know where to go from it, I see that Mr. Pistell only put up $2,000 and he got $3 million for putting up $2,000.

I see that he got close to $400,000 for expenses, some of which pretty clearly seem to me to have been possible, at least, personal expenses and I think perhaps I am entitled to infer, if I want to do so, that the $3 million was something that he at least regarded as a personal play thing and that he couldn't have gotten the $3 million unless there was some communication between himself and the people in IIT, whether it was Stanley

Graze or whoever, I don't know.

I am just speculating and tossing this out for consideration.

MR. ORAM: Well, there is no question that Mr. Pistell has testified that he developed the concept of Vencap then he spoke to Stanley Graze among others. There is no question about that.

I think Mr. Pistell also testified that during negotiations in an unrelated matter, he got to know Mr. Graze, they had a mutual interest in international monetary affairs, they got to know each other and developed a mutual respect for each other.

When you say in speculating about it that Mr. Pistell got $3 million, I think really, your Honor, Vencap got $3 million is perhaps more accurate.

THE COURT: Of course that is more accurate, but on the other hand, Vencap, at least not one hundred percent owned by Mr. Pistell, but Mr. Pistell has a substantial interest in Vencap.

MR. ORAM: That he does, your Honor. Of course Mr. Graze knew, and I think Mr. Pistell has testified to this.

Mr. Graze knew of Mr. Pistell's tax troubles in advance. He discussed this with him. I dispute the

t Mr. Anderson has put in as to the
hat Mr. Pistell has received because
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is Mr. Pistell's own money and that another
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ng a job and leaving an investment of
his own apartment could reasonably

URT: I suppose reasonableness or un-
out amount of money in a house is not
that I ought to think about. I suppose
significant if you take a job and you
use and in a $3 million operation, that
come more significant than this.
other hand, it does seem to me, Mr.
hat he got $60,000 a year plus $150,000
perquisites is something that I am
into account. I don't know how seriously.
before I come back to.
are, I regard, quite different problems
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to give $3 million to Mr. Pistell because
could take that $3 million and make out of
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MR. ORAM: Y

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THE COURT:

MR. ORAM: I

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THE COURT:

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our Honor, I agree with your

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, I think we would agree that we

If IIT what?

think you suggested that if IIT's

vesting in Mr. Pistell, that may be

nce, but it's not actionable.

now is, the second part to which

is whether Mr. Pistell used the

t he was supposed to use them for.

I guess a part of that is, whether

or not there was some prior understanding between him and IIT.

MR. ORAM: I suppose that would be a question, your Honor, and I must say as to a prior understanding, there is no evidence to that effect here.

THE COURT: I have suggested to you in some of my questions, I trust, that there may be some evidence, or at least not direct evidence, but evidence from which I could perhaps infer a possibility or perhaps more than a possibility.

MR. ORAM: Well, dealing with the possible inferences, your Honor, I think we might keep in mind that if there was an intent, as it has been alleged to give Mr. Pistell some money, you have to ask yourself, it seems to me two questions. The pressing tax need was something about $400,000 not $3 million and it would be perfectly simple to give him a check for $4,000 and get done with it.

THE COURT: No, you can't do it that simply.

MR. ORAM: Then what is the magic of the $3 million?

The second thing I was going to suggest was, if there was no purpose to this at all, it was a fraud, a conspiracy, hand Mr. Pistell $3 million, several things

don't seem to follow: Why is not Mr. Pistell here testifying, why has he testified three times, why is he not down with the rest of them named in the complaint enjoying his $3 million, why is he working seven days a week trying to build it into something, and I think when we focus on that aspect, you must conclude the inference while there was some attempt to hand him the money, just doesn't withstand analysis.

I think now I should turn to the three-page memorandum. I must say, your Honor, I think Mr. Anderson has misstated its significance, and I say that for this reason: There is no evidence of any reliance by anybody on that three-page memorandum.

THE COURT: Does somebody have a copy of it?

MR. ANDERSON: Yes, your Honor.

MR. ORAM: I think Mr. Anderson in his complaint suggests the possible weakness in that allegation by suggesting that either somehow relied on it, but the fact is, and the testimony shows, the deal was made well before the three-page memorandum was prepared and in fact the three-page memorandum refers to the August meeting of shareholders which set out the terms, privileges and preferences of the preference stock.

It also clearly demonstrates that the company

was formed with normal capital. It also clearly says that it is a high risk venture. It clearly says they were negotiating in the Out Island deal and that they did in fact make the deal and did in fact make an investment.

There is no testimony that the three-page memorandum was fradulent. There is no testimony that it is false and misleading. I say again, there is no testimony of reliance and no testimony to link either Graze or myself or Vesco or anybody else with the preparation of that document.

There is a further allegation in the complaint that the $3 million which was invested was secreted outside the United States. That is an allegation without any substance whatsoever.

Mr. Taylor took the stand and testified that three or four days after the investment, the funds were transferred to the Chase Manhattan Bank in London for a nigher Eurodollar interest rate and there is no testimony to the contrary.

The testimony with respect to the allegations in the complaint --

THE COURT: I think the paragraph "The leading Caribbean air carrier," could have been a little more candid.

MR. ORAM: Events have justified that, your Honor, because it is now the Bahamian Flag Carrier.

THE COURT: What I was going to continue to say, Mr. Oram, it seems to me that that is not a major portion of this three-page document and I don't regard that is the most significant part of it by any means.

MR. ORAM: I think the critical element about that document, your Honor, is the fact that it was prepared after the deal was made. That is what the testimony showed, that it was hand delivered to lawyers for IIT in the Bahamas.

THE COURT: You see, this doesn't help me very much.

MR. ORAM: It's not what we think of in U.S. securities parlance as a selling document. Mr. Murphy testified it was a memorialization.

THE COURT: That is right and I don't know how much significance to attach to it. If it was a selling document, I think I would be a little more concerned about it than I am, but obviously it wasn't a selling document.

The relationship between Vencap and IIT, it seems to me anyway, something different from the usual relationship between an investor and a solicitor of funds.

MR. ORAM: I think the testimony shows, your Honor, the arrangement, the agreement made between IIT and Vencap was made by Graze on the one hand, Pistell on the other and it was an arm's length transaction.

The testimony shows that the two reasonably well known New York law firms representing their clients, they completed the legal documentation, that IIT's counsel insisted that all material transactions take place in the Bahamas.

THE COURT: What are those two firms?

MR. ORAM: Wilke, Farr and Gallagher and my own, your Honor. I hope I haven't overstated the case as to my own firm.

Each of these firms had Bahamian counsel, and each was guided in all material matters by Bahamian counsel as it effected Bahamian law.

The complaint goes on to allege that an attempt to show that the IIT investment in Vencap was a sham, was that Vencap had and presently has no business, but at the time of the investment, Vencap obviously had concluded no transactions, but they were negotiating for one, the Out Islands Airways, and they in fact closed it at a later time.

We have spent a full week discussing Vencap's business affairs. I think plaintiff must have conceded that

Vencap does have business now and that the allegation that the investment was a sham is not accurate.

I think your Honor, that we should look at the question of the irreparable damage here, and I point to your Honor, that what the plaintiff is seeking is not the usual injunction. The usual injunction seeks to enjoin specific acts. What the plaintiff is attempting to do here, is to shut down the defendant's business entirely.

THE COURT: That is because he says if he doesn't stop the defendant's business entirely, he is not going to get any relief and he wants to save what is left.

MR. ORAM: Your Honor, he says that he is not going to get anything. There is an April 30, 1974 balance sheet of this company, Plaintiffs' Exhibit 14-4A which shows a total asset position of $2,600,000.

THE COURT: This is one of the things that concerns me. It is no longer $3 million.

MR. ORAM: It's no longer $3 million I suppose, your Honor, because there are investments in securities portfolio that fluctuate. There is no way of saying it won't be $3 million or $5 million or $10 million.

THE COURT: Or $50,000.

MR. ORAM: Or $50,000. But it is not to say --

THE COURT: I suppose Mr. Anderson is not concerned in taking the two million, six and making out of it $5 million. He just wants the two million, six before it disappears, so I don't think the problem is whether it ought to be larger or smaller. The question as far as dollars are concerned at the moment is, how much is there.

Of course the first question is, does he have a right to get at it by the relief he seeks.

MR. ORAM: That is exactly correct, your Honor, and we assert as strongly as we know how that there has been no showing of any state of facts, as they go to probable success, that entitles the plaintiff to relief that he seeks.

THE COURT: Do you want to have a few minutes, Mr. Anderson?

MR. ANDERSON: Yes.

THE COURT: We will take a couple of minutes.

(Recess)

THE COURT: I have a couple of questions.

Mr. Oam, what do you think Vencap is likely to contribute to IIT out of Turkish wine, African diamonds, I don't mean in terms of precise dollars, but what is your notion as to how that is going to mean something to IIT? I take it that the investment by IIT was, at least your

position is, that the investment was because it would produce something of value.

MR. ORAM: That is correct, your Honor.

I think the Turkish wine and the diamonds and the gold all indicate, first of all, that Vencap is a viable, operating, going business. If Mr. Pistell is successful in these ventures as he has testified he hopes to be, that his information leads him to believe he will be, that the benefits of those transactions will flow in part back to Vencap.

THE COURT: I understand that, but why should I think, and let's take the Turkish wine, is going to be productive? All I know is that there is an investment, or at least an investment in the offering in Turkish wine. I know about the gold mine which apparently isn't in production yet and I have heard about some diamonds in Africa and I wonder why I should think, on the basis of what I have been told and what is in the record, that Vencap is going to make some money for ITT one of these days.

MR. ORAM: I think, your Honor, that in the colloquy you had with Mr. Pistell there was a suggestion of this question whether you said if I had $3 million, why would I invest it, and I think Mr. Pistell's answer

was probably the best one, which is you wouldn't unless you knew and had some confidence in Mr. Pistell and what he could do. His testimony and testimony about him --

THE COURT: All I know about Mr. Pistell, I am serious about this, Mr. Oram, all I know about him is, he was given $3 million and it's now two million, six. Maybe if you were given $3 million at the same point in time, most people would only have one million, five.

MR. ORAM: That is precisely correct.

THE COURT: So I really don't know. I have no basis, it seems to me and that is why I am asking you the question, why should I think on the basis of this record that there is something special about Mr. Pistell.

MR. ORAM: The only way you can judge anyone in this context, your Honor, is what has happened in the past and I think Mr. Pistell has a record that is before your Honor that he has taken small companies, guided investments of other companies and been successful. There is no guarantee that he would be successful this time, but it's a suggestion, at least he has had experience and he has been successful.

If that is true, how is this going to enure to the benefit of IIT is the second half of your question.

THE COURT: It is really the end result of my

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question.

MR. ORAM: The benefits of this flow back to Vencap and there is, in the rights, privileges and preferences of the stock interest that IIT has, a method for distributing and seeing, for IIT itself to profit itself.

The only way you can conclude that IIT will not profit in these ventures are profitable, as to assume that instantly Mr. Pistell will redeem the shares, and there is no testimony at all that that is his intention or that is what he would do, but if he doesn't do that, if IIT does stay as a shareholder, they will profit, as we demonstrated with the numbers I think we prepared in an exhibit, this $300,000 profit.

THE COURT: Will IIT make currently, or in due course before the $3 million in effect is finally paid back, will IIT have a chance of getting back on a current basis a percentage of whatever Vencap makes?

MR. ORAM: Yes, surely, your Honor.

THE COURT: How does that work?

MR. ORAM: The first is, they get the six percent each year on the $3 million. That is $180,000. Thereafter, they have a participation and profits declared. In order for Mr. Pistell to get anything, they would have

to get something. I don't have the exhibit right at my hand, but the paragraph of the rights and privileges of that stock list the order in which they would participate, and we went through an exhibit which showed that on $300,000, I think their participation, a distributable profit was something about $240,000 compared to $60,000 for the common shareholders.

As I say, the success of these ventures, if Mr. Pistell's track record, which is substantial, gives --

THE COURT: If his what?

MR. ORAM: His track record in this kind of thing, and he is successful here --

THE COURT: Of course in this deal, his substantial record is he has gotten a lot of money for himself and the $150,000 house and IIT has gotten nothing.

MR. ORAM: Your Honor, I think we ought to deal with that. The loan of $590,000 is collateralized by shares owned by Mr. Pistell. The only testimony to which is --

THE COURT: That is --

MR. ORMA: Flag Redfern, which is significantly more valuable than the loan.

THE COURT: It is in his own name?

MR. ORAM: As far as I know, they are. The

Flag Redfern Company is controlled by the Redfern family.

THE COURT: Of course there is security there, but I don't think I am overstating it when I say that what has happened here, is that $3 million went to Vencap from IIT and all that we have seen so far, is that Mr. Pistell has been able to pay some taxes and buy a house, pay a lot of other expenses that he has and take a lot of trips and IIT, as far as I know, hasn't gotten a penny. We can hope for the future and we can hope for the best but I am incorrect or overstating the situation?

MR. ORAM: I think you are.

THE COURT: What IIT at the moment has is a hope. Do they have anything else?

MR. ORAM: IIT has an investment and so does the common stockholders of an investment. I think it's conceded that this kind of business requires tremendous travel, tremendous efforts.

THE COURT: I am not suggesting that Mr. Pistell has done anything improper in traveling. In fact, as far as I know, Mr. Pistell has done everything properly. I don't know that that is so and I have no reason for suggesting one way or the other. At the moment, all I am saying is that IIT put a lot of money into this organization and they have gotten nothing out and perhaps they

will in due course.

I just wonder how long we should wait.

Mr. Anderson?

MR. ANDERSON: Your Honor, I would like to respond to that last question if I may by assuming that Mr. Pistell does as well with Vencap as he testified he did with respect to, I think it was Capital Cities Television.

We have a gain of $500 million.

THE COURT: You lost me. Do that again.

MR. ANDERSON: Mr. Pistell testified that he took Capital Cities Television from obscurity, maybe a million dollars to $500 million.

THE COURT: Yes.

MR. ANDERSON: If we assume a gain of $500 million --

THE COURT: I think Mr. Pistell qualified that a little bit after he first said that. I think he allowed as to how he was involved in this but it wasn't entirely because of his efforts, but let's assume it for the moment.

MR. ANDERSON: The first thing happens is that 15 percent or 75 million goes to Mr. Pistell, so if we break this down into what he gets, he starts off, I will

just leave off the zeros on that, and that leaves a balance of 425 million for distribution to the stockholders, preferred and common.

The one thing that is apparent on this record, I submit to your Honor, is that Mr. Pistell does not consider himself to be an eleemosynary institution. And that given $425 million, he would split it in the way that was most advantageous to him, and under the agreements here, the way to split that is to give IIT $180,000, the six percent for a maximum of a year and that is what the agreement provides and that leaves a balance of $424,820 to be divided equally between Mr. Pistell and Mr. Blackman.

THE COURT: That, perhaps, is a way with some hyperbole answering my question, how much does Pistell or Vencap have to make before the $3 million will be paid back to IIT.

MR. ANDERSON: Your Honor, there is absolutely nothing that IIT can do short of relief from your Honor in this court to ever get its money back

THE COURT: Okay.

What do you think the record indicates with respect to your contention that IIT and Vencap and Pistell were violating the law, and as part of that, I would like to know what the law is you think they violated?

MR. ANDERSON: Your Honor, they violated Section 17-A of the 1933 Act, they violated Rule 10(b)(5). Those are the Federal Securities Laws.

We also think they violated the New York Business Law. As Mr. Oram stated, part of these violations involve corporate waste, but basically this is a 17-A and 10(b)(5) case.

THE COURT: What have they done that constitutes the violation, and I want to know what they have done so much, but what the record shows they have done.

MR. ANDERSON: Your Honor, the record shows that Mr. Pistell told Mr. Graze to sell blue chip United States securities.

Now, that testimony, by the way was before you --

THE COURT: I have heard that testimony. But he didn't say he told them to sell it so he could get $3 million.

MR. ANDERSON: He didn't say so we could rip-off $3 million. That is exactly right.

THE COURT: He just said he thought it was a good idea to sell.

MR. ANDERSON: The record shows, and I have forgotten the precise amount, but in the very months in

which the $3 million is taken out of ANBT, there was something like $50 million worth of blue chip securities sold -- I am sorry, I stand corrected. I understand that exhibit shows $19 million.

Now, that is not an insigificant amount.

THE COURT: That is so different from 3, perhaps you can wonder whether the sale was made to get $3 million. If you sell $19 million, maybe you have a different reason from getting $3 million than just selling the $19 million to get $3 million.

MR. ANDERSON: Your Honor, I think in response to Mr. Oram's question of why didn't he just get $590,000 to take care of his monumental tax, the reason is, in a conspiracy of the kind that we have alleged here, you don't find people doing and testifying just exactly what the game was.

THE COURT: You aren't suggesting, Mr. Anderson, and maybe you are; are you suggesting that they sold $19 million because they wanted $3 million to give to Mr. Pistell?

MR. ANDERSON: No, your Honor. The group that was involved in the removing of the dollar funds from the United States had probably a number of games to play. One of those was to get $3 million to Mr. Pistell.

THE COURT: How do I know that from this record?

MR. ANDERSON: What you know from this record, your Honor, is that you have an investment that on the basis of any rational analysis, Mr. Graze would not have done and Mr. Pistell would not have asked him to do. If you take the kind of pie in the sky that Mr. Pistell sells with respect to diamonds and sapphires in the Cameroons or gold in Canada or mining properties in Mexico, you show that if he makes the money he says he is going to make, Mr. Pistell is going to come out with $278 million, Mr. Blackman with $212 million and Vencap with $100 -- I am sorry, IIT with $180,000.

THE COURT: One thing that might suggest is that IIT made a bad deal.

MR.ANDERSON: Your Honor, I don't think there is any way to read the economics of this other than IIT made a bad deal.

THE COURT: All right, I accept that, but a bad deal is not unlawful.

MR. ANDERSON: Your Honor, a bad deal which is supported on the basis of a three-page memorandum, and I would suggest to you that if there ever was a private placement memorandum or there ever was an offering circular, this document, Exhibit 12-278 is one.

THE COURT: Of course, if there was a deal between Pistell and Graze, you wouldn't have to rely on the three-page memo, you would have the deal.

MR. ANDERSON: Your Honor --

THE COURT: Perhaps, and I am going off on a tangent for the moment, you don't need the three-page document if there was a deal between Pistell and Graze to get OIS money to Pistell. Our position is that there was a deal so I am not quite sure what the document adds to your position. I guess your position is that the document is so incredible that it supports the inferences that you want me to make.

MR. ANDERSON: Your Honor, this document together with the terms and conditions of the preferred or preference stock, I think virtually compell the inference that there was a deal.

THE COURT: Okay.

MR. ANDERSON: Your Honor, if I could make one or two other comments.

First, whether or not this is a United States Securities Law transaction. I would like to say this: There were millions of blue chip securities sold. The money is sent to the Bahamas to be laundered --

THE COURT: On that, Mr. Anderson, I think it

would be useful to me if you could support the record, or make a record with respect to the existence of United States stockholders. At the moment we have an insubstantial record on that.

Can you deal with that?

MR. ANDERSON: I can, your Honor, at quite a considerable expense by bringing somebody from Verney-Voltaire.

THE COURT: Can you do it by way of affidavit?

MR. ANDERSON: I can certainly do it by way of affidavit.

THE COURT: I don't know whether Mr. Oram will accept that but I think I would like something in the record. If I am satisfied, and I would like Mr. Oram to know this as well as you, if I am satisfied there are IIT stockholders here, I am not completely certain of this but I think that will satisfy me as to the question of jurisdiction of the subject matter, but I do think that I need something more than that long list of stockholders which was not, it seems to me technically qualified.

Actually I would suppose, although I am not going to ask Mr. Oram to do this, I would suppose this is something you could work out among yourselves. I think

you ought to plan to do that one way or the other.

MR. ANDERSON: Your Honor, for the purposes of this trial of the action, I obviously would make, bring into technical compliance the proving of those computer runs.

THE COURT: My purposes at the moment of dealing with a motion for preliminary injunction.

MR. ANDERSON: I understand, and I think there is sufficient jurisdictional handles.

THE COURT: I am not sure of that.

MR. ANDERSON: Your Honor, in connection with the other case, there is an affidavit of one of the OIS people with respect to this. We will pull that.

THE COURT: I am aware of that. That is not in this record. Perhaps Mr. Oram and yourself can talk about it.

Is there anything further on the merits that you would like to talk about?

MR. ANDERSON: No, your Honor, I think that takes care of it.

THE COURT: Mr. Oram, anything else?

MR. ORAM: Only your Honor, that I think I should repeat, the relief sought here imposes a tremendous burden on the plaintiff and on the record in this

case, that burden hasn't been sustained.

THE COURT: Is there a change between you with respect to the state of the record that I took last Friday in camera?

MR. ANDERSON: No.

THE COURT: As you know, the way I have left it, it is in the record and available of course if you want to look at it, Mr. Anderson and it's available to me of course to do what I want to do with it.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IIT, an International Trust, et al.,

Plaintiffs,

vs.

VENCAP, LTD., et al.,

Defendants.

74 Civ. 2504

Before:

HON. CHARLES E. STEWART, JR.,

District Judge

New York, July 31, 1974
5:30 p.m.

APPEARANCES:

ANDERSON RUSSELL KILL & OLICK, PC., Esqs.,
Attorneys for Plaintiffs,
Eugene R. Anderson, Esq.,
Leon Kellner, Esq., of Counsel

HAVENS WANDLESS STITT & TIGHE, Esqs.,
Attorneys for Defendants,
John C. Oram, Jr., Esq.,
Gerald J. Fields, Esq., of Counsel

SCHWARTZ BURNS LESSER & JACOBY, Esqs.,
Attorneys for the Receiver,
Herbert P. Jacoby, Esq., of Counsel

ARNOLD I. BURNS,
Receiver

MR. JACOBY: Judge, I think we have had a very constructive discussion during the past hour and the upshot of it basically is that Mr. Anderson is prepared to withdraw objections that he heretofore made to the proposed order that we are submitting on behalf of Mr. Burns, perhaps subject to the figure that is to be inserted in one of the decretal paragraphs.

Mr. Oram has also indicated substantial accord, but there are two areas he has indicated that he would like to get your thinking on, basically being the matter of current compensation to Mr. Pistell and I believe Mr. Blackman.

MR. ORAM: Correct.

MR. JACOBY: And the other area being the arrangements that can be made with respect to retaining new counsel to represent the corporate defendants in this action.

MR. FIELDS: And the bond.

MR. JACOBY: Oh, yes, and there is an application to materially reach the bond that the plaintiffs have been requested to post.

THE COURT: All right.

MR. ORAM: Your Honor, we prepared and submitted with everyone present copies of a proposed order which we drew up after reading the order submitted on behalf of Mr. Burns and it is essentially the differences between

that proposed order and the one we submitted which has occupied this hour. I have a copy of it there. I think we can shorten it by saying our order was drawn on the theory that we understood your Honor's position to be that the business of the named corporate defendants were to be continued to be run and to be run by Mr. Pistell with a significant difference, that there would be, as I use the analogy in these discussions, sort of a super board of directors; where somebody was not pressing on the brake, but had his foot on the brake if there was something that Mr. Burns --

THE COURT: I don't think a super board of directors is the right word, but I think the rest of what you said is fine, yes.

MR. ORAM: In that light we drew an order which contemplated continuing the business and as part of that, that Vencap, Intervest and Intercapital would be free to make deals, but there would be a lag time they could commit and the time that the receiver would have an opportunity to look over these deals and refer them to you. We have withdraw the distinction -- we have withdraw from Mr. Burns' order in that we agree his order provides that if we have a deal to do we come to him first. It isn't a question of a time lag, it is when he has an opportunity

to look and make all the investigations he wants and reports to you, then and only then may a commitment be made. We are willing to withdraw and accept that difference. It is satisfactory under the circumstances.

The next area -- the two areas that are open are the question of compensation to the operators of this business, and again this was drawn in the view that they would continue to operate the business and our proposed order suggests a salary for so doing which was the salary contained in the employment contract in which we didn't think there was any dispute about because of the testimony at the hearing of this salary, putting aside the other emoluments, was not unreasonable under the circumstances.

Mr. Burns has advised that his order advised that Mr. Pistell or the companies would come with a deal with a proposed effort that was necessary and that the matter of compensation would be decided at that point.

That is slightly different from our understanding of how the business was going to be operated and it is at this point we needed your help. I think that is where we are on that idea.

THE COURT: On the salary point, we are about to embark on a slightly unusual sort of undertaking. My notion is I like the way Mr. Burns proposed it; that is that

the salary compensation will be determined later. It does seem to me that the fact that Mr. Pistell and Mr. Blackman have the arrangement which they currently have with Vencap is something that will be of substantial significance in considering what their compensation should be, but I would like to leave it open for the time being. I am not sure of Mr. Burns or Mr. Jacoby, how you had it in this.

MR. JACOBY: Well, we did permit a limited amount -- it is left in blank. I am sorry, sir. I will give you a copy.

THE COURT: I would think what I would prefer to do is to leave it wide open and leave it up to Mr. Burns and you, Mr. Jacoby, to come to me from time to time and recommend to me what ought to be paid to Mr. Pistell and I would also suppose that Mr. Oram could come to me from time to time and recommend that certain payments be made, whatever they are. I would like to leave for the time being -- I am not being very precise about the procedure on this. I would just like to leave it open. I think it ought to be recognized, however, that as I have just indicated that Mr. Pistell and Mr. Blackman have contracts and I would think the amounts that they are supposed to receive under those contracts would be a point of departure.

But I would like to leave that question open.

All right, what is the next point? I am not sure what that means in terms of this order. It means obviously the order has got to be changed, but how it is done I am not sure.

MR. BURNS: I don't think it necessarily requires change.

THE COURT: If it requires a change from Mr. Oram's proposal, but maybe not in terms of your proposal.

MR. JACOBY: It is at the foot of page 2. I think it is a little broader in our order than the Judge was talking about.

MR. BURNS: The intent meant there was to fill in an amount of money which took care of petty cash requirements.

THE COURT: I don't think we need to worry about that, do we? I would think you could take your order, Mr. Burns -- maybe I am saying this too quickly, but if you take the last line on page 2 after the word "occurrence" and put a period there instead of a coma, would that do it?

MR. ORAM: I think what Mr. Burns was suggesting was some modest sum of money -- I take it the difference is that you could disperse that without coming to your Honor,

but if there was something more than that he would have to come to court. It is the phone call in the middle of the night.

MR. ANDERSON: Since we are in a very early stage of this I think your Honor's suggestion just to end that paragraph after the word occurrence is appropriate.

THE COURT: I think so and let's feel our way along. I would think that after we worked with this for a little bit we will know better what we ought to do. I would think what is suggested by Mr. Burns' proposed order and what Mr. Oram is saying makes sense.

Every time Mr. Pistell wants to spend $50 he shouldn't have to come to me or even clear that with Mr. Burns.

MR. FIELDS: I think that's why you had the last sentence in that decretal paragraph, so there would be some number below which --

TEH COURT: I would prefer to leave it open for the moment and let's come back on this after we tried to work at this for awhile. I anticipate that there are problems that are going to arise that none of us have thought of and we are going to have to modify this from time to time.

All right, what's the next one?

MR. ORAM: The next difference between our order

and Mr. Burns' which remains open, your Honor, is the question of counsel in two different categories.

If you will look on page 4 of our proposed order you will see in the second full decretal paragraph a proposal allowing Vencap, Intercap and Intervest to retain and pay legal counsel and accountants for services rendered in connection with business of those companies and that authorization, as we propose it, would be up to $25 00 before we had to come back and seek additional approval. The immediate following paragraph is the authorization for Vencap,Intercapital and Intervent to retain independent counsel for the purposes of this lawsuit.

As your Honorknows this is something that has troubled us and we have taken steps on our own behalf, and I am sure the companies will, to seek independent counsel. We thought it appropriate to have an order in this order to allow the companies to retain such counsel.

THE COURT: I have no problem with that last paragraph that you just talked about. I think that's entirely appropriate. The preceding paragraph bothers me a little bit because I am not quite sure what -- can you spend $25,000 in one week and then come back and get -- I wonder whether you need a figure that at all. It seems to me that people that get involved in this either by way

of legal services or accounting services ought to be paid on a professional basis and I don't know why we need a figure.

MR. ANDERSON: Your Honor, I might suggest with respect to that first paragraph that it would be my understanding that the receiver would retain counsel and retain accountants and he has asked for the authority to retain accountants, although there was no specific request made in the receiver's order for counsel, but I think that is implicit and I wouldn't see any necessity for having two sets of legal counsel for these companies. The business of these companies under --

THE COURT: What do you mean two sets?

MR. ANDERSON: Well, Mr. Burns' counsel doesn't represent those companies, they represent Mr. Burns.

MR. ANDERSON: Ordinarily counsel for a company in receivership is retained by the receiver.

THE COURT: Yes, but this is not quite that situation, Mr. Anderson. What we are trying to do here -- what my objective is as to permit Vencap to function and to function only subject to the supervision of Mr. Burns. I don't expect Mr. Burns to make independent judgments about what Vencap is going to do next week. I expected Mr. Burns to review what Vencap proposes to do.

It seems to me Vancap needs counsel and it seems

to me Mr. Burns needs counsel. I agree in the interests of trying to save money -- we don't want to have a bunch of lawyers who are duplicating each others services, but I don't see any other alternative to allowing Vencap to have its own counsel under these circumstances.

MR. ORAM: Would the language of the order -- of the third paragraph be satisfactory if placed in the second paragraph; retain and pay counsel?

MR. BURNS: I would like to speak to that, if I may. Focusing on the second decretal paragraph on page 4 of the proposed order, I have difficulty in a situation where I am charged with the responsibility of preserving the assets over this company, taking charge of them, and having an open ended ability on the part of the management of the company to make commitments which will diminish those assets without my knowing about it and my difficulty with this paragraph --

THE COURT: As I understood it the order is designed to prevent that from happening.

MR. BURNS: I have difficulty with the order. I don't think it does.

THE COURT: Because of this paragraph?

MR. BURNS: Because of the wording of that paragraph.

paragraph.

THE COURT: Oh, I see.

MR. BURNS: Which, in effect, gives them the ability to commit the corporation to obligations without any knowing about it.

On the subject of saving money, one of the things that we are doing to require --

THE COURT: You mean obligations to lawyers and accountants.

MR. BURNS: Yes, obligations to lawyers and accountants, which could be substantial.

MR. ORAM: That is the reason for the top side figure, because that was an amount and beyond that --

MR.BURNS: And I have difficulty with picking a number because it is sort of making mature judgments. I would much prefer to have a machinery that is set up to make an appraisal on a case-by-case basis depending upon what the services will be and what has to be done.

THE COURT: What do you suggest, Mr. Burns?

MR. BURNS: I would suggest that they have the right if they deem it necessary to retain counsel on a case-by-case basis to make that submission and that suggestion to the receiver who will make a recommendation, if necessary, to the Court and pass it through that

machinery.

MR. FIELDS: How do you deal then with the need the company has for continual counsel absent a particular deal? I mean, your supposition would be as if Mr. Pistell each time he has got a new venture and he needs legal advice or accounting advice he has to come to you.

MR. BURNS: My feeling about that is that we are real people in a real world dealing with real problems and as we gain experience together, in a sense mowing new ground, we will work out -- I have the flexibility, I think, subject to the Court's supervision to do reasonable things when required.

MR. ANDERSON: Both lawyers and accountants are accustomed to being retained on a basis that their retention, fees or both are subject to Court approval. That is not an unusual basis on which to work.

MR. ORAM: I can't comment on how usual it is, but I would think that there are -- even in the order as proposed by Mr. Burns, there are obligations on the company to prepare outlines, descriptions, detailed analysis of the two pending deals, to gather and to do whatever is necessary to turn over to Mr. Burns the assets and properties of the company, so I would suggest to you that from after the date of this order there are going

to be things in which counsel was going to have to be involved and I thought that by suggesting this paragraph with a rather modest topside figure that those things could go on and if we get into some large deal which requires --

THE COURT: I don't disagree with that notion, Mr. Oram. I think I would be inclined to go along with some kind of a proposal which makes it clear that Vencap can retain professional help, but as I think of it I don't think these two paragraphs do it.

In fact, the more I think about the second one it seems to me is much too broad. It suggests that you can retain and pay counsel with no limit and when you have a situation such as you have here where there is a limited amount of money, I think that goes too far.

I am not quite sure how you deal with this problem, however.

I would like putting a figure in, for one thing. You know, you put a figure of $25,000 in and you hire an accountant and you know darn well he is going to send you a bill for $23,000. And maybe the work is only worth twenty-two nine, or maybe it was worth 50,000. I don't see anything in your order, Mr. Burns, which directly deals with this. Maybe we don't need anything at all.

MR. JACOBY: Yes, there is nothing in our order. I do feel that Mr. Oram has a real problem, though, in connection with the defense of this lawsuit. We were not aware when we drafted this order that his firm was withdrawing and that other counsel was going to be brought in.

THE COURT: I wonder if we need anything at all. If we say nothing, isn't it perfectly clear that of course Vencap can hire counsel? I don't know, maybe it isn't.

MR. ORAM: We didn't think it was when we prepared the order, your Honor, and because of the two separate legal problems that we had we thought it best to deal with them.

THE COURT: How about it, Mr. Anderson, what do you think?

MR. ANDERSON: I am sorry, I was --

THE COURT: What do you think we ought to do about this problem?

MR. ANDERSON: Your Honor, I think that on page 3 of Mr. Burns' order to draw an analogy of the claims of Pistell for past services, I think that that provides a general mechanism for the approval of fees of counsel for -- independent counsel retained by the firms and the provision that those bills be submitted in writing

to the receiver for his consideration and recommendation, but not paid without the approval of the Court. That's a perfectly acceptable and I think usual --

THE COURT: Maybe you could just enlarge that paragraph so that it not only deals with the past but also deals with any claims for the future.

Is that what you are suggesting?

MR. ANDERSON: Yes, and broadening it out to include --

THE COURT: Which it seems to me would take care of Mr. Oram's point, it would make it clear because it looks to the future, but it is contemplated that Vencap will employ counsel and possibly others.

MR. ORAM: In defense of the lawsuit, your Honor, I suppose we could resolve it -- someone has suggested here if --

THE COURT: I don't think we need to specify, Mr. Oram. The suggestion I take it is that in this ordering paragraph we add something that says that this will also be the procedure with respect to any such claims in the future. Those aren't the words, of course, but if you do it that that way I think it is implicit that this means that Vencap can incur such expenses in the future.

I think I would like to do it that way.

All right, what's the next one? Have we got

a problem about the amount of money, the bond?

MR. ORAM: The bond.

THE COURT: Is that the next one?

MR. ORAM: I believe it is.

MR. JACOBY: Yes.

THE COURT: How much does a bond of $500,000 cost?

MR. ORAM: My last experience was a dollar a thousand, your Honor, with a substantial balance sheet. Yes, I think that's correct. $10 a thousand I think it was. $10 a thousand.

MR. BURNS: We just paid $250 for a $25,000 bond, which is collateralized.

MR. FIELDS: It depends on the collateral. If you have good collateral it is about 1 per cent.

MR. KELLNER: I think it is 2 per cent now.

THE COURT: Let me ask the question once again. How much is it going to cost to do what Mr. Orm suggests?

MR. ANDERSON: I think that to get a half million dollar bond not only costs money but it means that my client has got to come up with $500,000 that's employed elsewhere and I think that in the context of the amount of money that Pistell and Blackman have here, your Honor initially

set what I thought was a reasonable bond. You increased it $50,000 at the time of your July 5 opinion and order and I think that what additional bonding premiums are just taking --

THE COURT: I don't think we need to discuss this any more, Mr. Anderson. I am not going to change what I have done. We will leave it at $50,000.

Now, what else do we have?

MR. ORAM: Your Honor, in view of the fact that new counsel will have to be sought for the companies and for our firm, we thought it appropriate -- and I don't know that there is any objection on Mr. Anderson's part -- to seek a stay of the pending discovery.

MR. ANDERSON: Requirements that we have until those matters are taken care of, which willbe done as promptly as we can and give them a chance to take a look and see what they ought to do about it.

THE COURT: What do you say?

MR. ANDERSON: I would only suggest that we fix an outside date, and I am very flexible on that.

THE COURT: Why don't you discuss that with Mr. Oram and with new counsel, whoever they are.

MR.ORAM: I think also, your Honor, that -- perhaps we can put this off the record and decide whether you

want to go back.

THE COURT: Sure.

(Discussion off the record.)

THE COURT: Mr. Anderson was saying that he assumes an order will be submitted. I am going to ask somebody in the light of our discussion this afternoon to prepare an order.

I don't know who should do that. Maybe you should do it, Mr. Anderson, for my signature tomorrow and at that time I would assume that I will take the proceeding out of camera.

MR. ANDERSON: I think that we would like to ask you to hold it in camera say until next Tuesday at 5 p.m. Is that acceptable?

MR. ORAM: That is the point that I was getting to.

THE COURT: I have no objection to that.

MR. BURNS: Can we go off the record for one minute?

THE COURT: Yes.

(Time noted: 5:50 p.m.)

Opinion and Order of Stewart, J., dated July 3, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 2504

IIT, an International Investment Trust, and GEORGES BADEN, JACQUES DELVAUX and ERNEST LACUIT, as Liquidators for IIT, an International Investment Trust,

Plaintiffs,

—against—

VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N. V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants.

APPEARANCES:

Attorneys for Plaintiffs:

ANDERSON RUSSELL KILL & OLICK,
New York, N.Y.
Eugene R. Anderson, Esq.

Attorneys for Defendants Vencap, Ltd., Intervent, Inc., Intercapital, N. V., Richard C. Pistell, Charles E. Murphy, Jr., David Taylor and *Havens, Wandless, Stitt & Tighe:*

HAVENS, WANDLESS, STITT & TIGHE,
New York, N.Y.
John C. Oram, Jr., Esq.

Opinion and Order of Stewart, J., dated July 3, 1974

STEWART, *District Judge:*

On June 10, 1974 the plaintiffs commenced this action and moved by Order to Show Cause for a preliminary injunction pursuant to F.R.C.P. 65 and for the appointment of a receiver. Vencap, Ltd., Intervent, Inc., Intercapital, N. V., Richard C. Pistell, David Taylor, Charles E. Murphy, Jr. and Havens, Wandless, Stitt & Tighe appeared and opposed plaintiffs' motion for a temporary restraining order. On June 10, this Court entered a temporary restraining order enjoining and restraining certain of the defendants from expending, dissipating, reducing, encumbering, investing, transferring and exercising any control over the present and future assets of IIT, Vencap, Intervent and Intercapital.

The temporary restraining order was modified on June 14, 1974 to eliminate the defendants David Taylor, Charles E. Murphy, Jr. and Havens, Wandless, Stitt & Tighe. As of June 20, 1974 the temporary restraining order was continued by order of the Court until July 1, 1974. The TRO was continued again on June 28, 1974 until July 5, 1974.

The Court conducted evidentiary hearings on plaintiffs' motion for a preliminary injunction and for the appointment of a receiver on June 14, 17, 18, 19, 20 and 21 and heard argument on June 24, 1974. Defendants Vencap, Intervent, Intercapital and Richard C. Pistell appeared at the hearings and opposed plaintiffs' motions. At the conclusion of the hearings, the Court directed the parties to submit proposed findings of fact and conclusions of law.

The complaint alleges jurisdiction based principally upon alleged violations of the Securities Act of 1933 and the Securities Exchange Act of 1934. The plaintiff, IIT, is a mutual fund organized under the laws of Luxembourg which is presently in liquidation. Plaintiffs Baden, Delvaux

and Lecuit are its Liquidators who are acting under the jurisdiction of the District Court of Luxembourg. The plaintiff was one of the mutual funds in the IOS complex which came under the control of Robert L. Vesco, Milton F. Meissner, Stanley Graze, Norman LeBlanc and others. The complaint alleges that pursuant to a conspiracy, involving Vesco and others, securities of the "Dollar Funds" including IIT were sold in the United States securities markets; that $3,000,000 of the proceeds of these sales were transferred to Vencap, a shell company formed by defendant Pistell; that the investment in Vencap was a sham; that in connection with the investment a three page memorandum was delivered to IIT which made material misstatements of fact and omitted facts necessary to make the facts stated therein accurate; and that Pistell was aided in the foregoing by the other defendants. It further charges that the $3,000,000 was used for the personal benefit of defendant Pistell and others to the detriment of IIT and its fundholders.

The first cause of action claims that defendants "singly and in concert" committed violations of Section 17(a) of the Securities Act of 1933 and the second claims violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Other causes of action claim violations of Section 352-c of the General Business Law of the State of New York, common law fraud, corporate waste, breach of fiduciary obligations, aiding and abetting these violations, failure to segregate IIT's funds and failure to disclose the alleged violations of law.

Defendants who have appeared have denied all of the material allegations in the complaint.

Plaintiff IIT is an International Investment Trust which is an open-ended mutual fund, organized as a unit invest-

ment trust under the laws of the Grand Duchy of Luxembourg. Plaintiffs Baden, Delvaux and Lecuit are duly sworn Liquidators for IIT (hereinafter "Liquidators") appointed by the District Court of Luxembourg. They authorized the commencement of this action.

Defendant Robert Vesco was chairman of the Board of Directors of IOS, Ltd. IOS, Ltd. is a corporation incorporated in Canada which through subsidiary companies managed mutual funds, one of which was IIT.

Defendant Milton F. Meissner was president of IOS, Ltd. and president of IIT Management Company, S.A. IIT Management Company, S.A. was a corporation organized under the laws of Luxembourg which was the management company for the mutual fund, IIT.

Defendant Norman LeBlanc was executive vice-president of IOS, Ltd.

Defendant Stanley Graze, who was president of IOS Management Services, Ltd. and Incap, was responsible for the investment management of all the IOS-managed mutual funds. International Capital Investments (Sterling), Ltd. also known as Incap, had the responsibility of managing the various IOS mutual funds, including IIT, and was the successor to IOS Management Services, Limited (Bahamas).

Defendant Pistell is a United States citizen who resides in the Bahamas. Pistell is (1) Chairman of the Board of Directors, President and Treasurer of defendant Vencap and beneficial owner of 50% of the ordinary stock of Vencap; (2) president and sole director of defendant Intervent; (3) owner of 50% of the stock of defendant Intercapital; and (4) owner of 50% of the stock of Conservative Capital. Pistell was formerly the Chairman of the Board of various companies and has had significant

experience in locating and financing new ventures. Pistell maintains an office for the transaction of business at 99 Park Avenue, New York, New York.

Defendant Walter Blackman is a resident of the Bahamas, director and executive vice president of Vencap, owner of 50% of the ordinary stock of Vencap, owner of 50% of the stock of Intercapital and owner of 50% of the stock of Conservative Capital. Blackman is a management consultant with significant experience in insurance and other businesses.

Vencap is a Bahamian corporation with offices in the Bahamas and at 99 Park Avenue, New York, New York.

Intervent is a Delaware corporation with offices in Midland, Texas and at 99 Park Avenue, New York, New York. Intervent is a wholly-owned subsidiary of Vencap.

Intercapital is a Netherlands Antilles corporation with offices in Curacao and at 99 Park Avenue, New York, New York. Intercapital has no officers or directors.

Defendant David Taylor is a member of the Bar of the State of New York and is a partner in the defendant Havens, Wandless, Stitt & Tighe. He is also Assistant Secretary of Vencap and the sole incorporator and Secretary of Intervent. Taylor is also a director of Chibex and is attorney-in-fact for Pistell. Taylor maintains an office for the transaction of business at 99 Park Avenue, New York, New York.

Defendant Murphy, a member of the Bar of the State of New York, is a partner in the defendant Havens, Wandless and is Attorney-in-fact for Pistell. He was a director and secretary of Vencap. Murphy maintains an office for the transaction of business at 99 Park Avenue, New York, New York.

Opinion and Order of Stewart, J., dated July 3, 1974

Defendant Havens Wandless is a law firm which maintains an office for the transaction of business at 99 Park Avenue, New York, New York.

The officers and directors of Vencap are: Pistell, Chairman of the Board, President, Treasurer and Director; Blackman, Executive Vice President and Director; Ernest Raymond Lawson, Vice President and Director; Taylor, Assistant Secretary.

Pistell and Blackman each own 50% of the common shares of Vencap. The common shares of Vencap have the sole voting and control rights. The plaintiff, IIT, owns 30,000 shares of redeemable preference stock and warrants to purchase 30,000 more of such shares upon the payment of an additional three million dollars.

Intercapital is owned and controlled by Pistell and Blackman in equal shares. There are no other equity interests in Intercapital.

Intervent is a wholly-owned subsidiary of Vencap which is controlled by Vencap directly and by Pistell and Blackman indirectly.

Conservative Capital is owned in equal shares by Pistell and Blackman. Conservative Capital owns 2,000,000 shares of Chibex out of a total of 3,700,000 shares. Conservative Capital directly controls Chibex, and Pistell and Blackman indirectly control Chibex through their control of Conservative Capital.

Pistell has had personal and professional relationships with Vesco, Graze, Meissner and LeBlanc. In early 1972, Pistell met Graze in connection with a transaction unrelated to the present action. Over a period of weeks they discussed the philosophy of money markets, the perils of the stock market and particularly whether international monetary parity could be maintained. During one of

Pistell's visits to London, Graze asked Pistell for views regarding various investments which had been made in the past by FOF, IIT, and/or Venture Fund. Graze told Pistell that it was Graze's intention to get the Funds into a more liquid position in the event the Dow Jones average dropped below 1040. Pistell's views on the subject were solicited by Graze, and Pistell suggested that if he were in Graze's position, he would invest in Japanese Yen, Deutschmarks and in gold because he predicted that there would be further currency devaluations and a resulting increase in the world price for gold. Thereafter, from April 1972 through October 1972 IIT had net sales of $121,708,019.00 in United States securities.

Also in early June 1972, Pistell decided to organize a venture capital corporation. One individual with whom he discussed his concept was Graze. In June 1972, with the help of his lawyer Murphy and a Bahamian law firm, Pistell organized Vencap. Pistell and Armoury de Reincourt each received 2,000 shares of Vencap common stock for $2,000. De Reincourt later dissassociated himself from Vencap due to adverse publicity caused by Vencap's connection with Vesco and Vesco's associates. Blackman was eventually installed as owner of 50% of the ordinary shares of Vencap.

On August 31, 1972, Vencap's shareholders authorized the issuance of 30,000 redeemable preference shares, par value U.S. $100. Prior to the issuance of 30,000 preference shares by Vencap, Graze had indicated that he would be interested in an investment in a venture capital company managed by Pistell. During August of 1972 Graze and Pistell came to an understanding that IIT would invest in Vencap. Shortly thereafter, a three-page memorandum (a copy of the memorandum is attached hereto as Ex-

hibit A) was prepared at Pistell's instructions to provide a basis for IIT's transfer of $3,000,000. The three-page memorandum was prepared "in connection with the private placement of securities."

During September 1972, Willkie, Farr & Gallagher, a law firm doing business in New York City, prepared an agreement with respect to the IIT investment in Vencap which was presented to Pistell's lawyers for review. On September 29, 1972, in the Bahamas, an agreement providing for IIT's investment in Vencap was executed by Meissner on behalf of IIT and by Pistell on behalf of Vencap. The closing occurred on October 9, 1972 when the funds, part of the proceeds of United States blue chip securities, were transferred by American National Bank and Trust Company (ANBT) of New Jersey to the Bahamas Commonwealth Bank in the Bahamas.

The substantive portions of the three-page memorandum show that it formed the basis for the transaction and was a formal document describing Vencap to IIT. As such it was part of the inducement which caused IIT to invest $3,000,000 in Vencap.[1] The memorandum states that "The primary purpose for organizing Vencap was to afford a vehicle for knowledgeable investors of a limited number to participate through 'preferential capital investment' in a sophisticated investment program with respect to growth opportunities throughout the world;" and Vencap's "pur-

[1] This Court is asked by the plaintiffs to infer that, if the three-page memorandum was not an inducement, then it was just part of the sham to make the transaction look complete with knowledgeable investors on both sides. While such an allegation provides the only other rational explanation for the purpose of the memo, at this time such an inference of sham will not be made. This Court finds that the apparent purpose of the memorandum, that of being part of Vencap's inducement to IIT, was the reason for its preparation and use.

pose and philosophy are directed toward the sound investment of preferential capital utilizing management's contacts and experience in growth opportunities which are designed to reflect both short and long term returns on investment . . ." Vencap further sells itself by describing its management as having "broad international and financial experience in venture capital programs . . ."

The memorandum also states that Vencap "proposes to offer on a very limited basis an aggregate initially of $3,000,000 in preferred shares . . . to a select group of sophisticated investors" who recognize that "risk deserves a high return . . ." Addressing itself to Vencap's investment, the memorandum states that Vencap "is contemplating an investment consisting of debt and equity of up to $1,500,000 which it believes" will secure a good return on its investment in a leading Caribbean airline. The memorandum asserts that this investment "offers real prospects for early and substantial return on" Vencap's investment and

> "is just one of several outstanding prospects which . . . will enable (Vencap) to establish a broad investment base designed to offer . . . short and long term returns *which will inure primarily to the benefit of the preferential capital investors*" in Vencap. (Emphasis added)

The agreement, finalized shortly after the three-page memorandum was prepared and delivered to IIT officials, describes the powers and rights that IIT has as a preferential shareholder. The preference shares have no vote, are to be given a six percent noncumulative dividend only when and as declared, are to share in one-third of the net earnings of Vencap when and as declared, and are re-

deemable at par and six percent for the portion of the year of redemption. IIT, the preference shareholder, cannot receive any payments or other benefits unless Pistell and Blackman, the holders of the ordinary shares, affirmatively consent.

In March 1973 Pistell (as well as Blackman) agreed to sell his interest in Vencap at cost to LeBlanc if and when requested to do so by LeBlanc. Pistell and Blackman have each agreed to sell to the other for $5,000 their interest in Vencap in the event of the death or termination of employment of either. Except for the $4,000 paid in by the ordinary shareholders, the capital of Vencap consists of the three million dollars provided by IIT. Intervent and Intercapital have no funds other than funds obtained by or through Vencap.

After IIT's investment of $3,000,000, Pistell caused Vencap to deposit $600,000 in Handelskredit Bank, a "private" Swiss bank, after which Pistell caused Intercapital to borrow $590,000 from Handelskredit Bank. Intercapital, in turn, loaned the $590,000 to Pistell. Vencap pledged its $600,000 certificate of deposit to Handelskredit Bank as collateral for Intercapital's loan from Handelskredit Bank. In addition, Pistell pledged to Handelskredit Bank his interest in Pomaikai Oil Company which was subsequently merged into Flag Redfern Oil Company as collateral for the loan to Intercapital. As further collateral Pistell gave Vencap an option to purchase 10 percent of his interest in Flag Redfern which shares had already been pledged to Handelskredit Bank.

Pistell used the $590,000 which he borrowed from Vencap through Intercapital to pay his own State and Federal income taxes, to pay outstanding personal loans from the Chemical Bank and Franklin National Bank and to

satisfy a judgment entered against him. Prior to Pistell's payment of his past due Federal taxes, the United States had a lien against all of Pistell's personal and real property.

In December 1973, Pistell borrowed $55,000 of Vencap's funds from Investment at 8 percent interest. There is no collateral for the loan from Intervent except for Pistell's promise that if the loan is not repaid by the end of calendar year 1974, he will give a mortgage on his home in the Bahamas.

According to Vencap's accountants, Field, Tiger, Krell & Werber, who are located in Great Neck, Long Island, New York, during the period from the founding of Vencap through April 30, 1974, Pistell has received $356,640.62 from Vencap in compensation as follows: In March 1973, Vencap entered into an employment contract with Pistell which provided that Pistell's compensation would be $60,000 per annum salary, 15 percent "off the top" of any profits earned by Vencap and a house in the Bahamas costing $150,000.

Vencap has also paid more than $10,000 to Louise Pistell, Pistell's ex-wife, as alimony payments. Vencap has paid more than $2,000 for the telephone bills of Carroll Pistell, Pistell's current wife. Pursuant to these arrangements Pistell has received $190,094.57 for salary and advances and the house which cost $162,546.05.

From the founding of Vencap through April 30, 1974 (22 months), Vencap has paid out for the account of Pistell:

(a) $58,179.87 in travel and entertainment,

(b) $35,034.56 in transporta ion expenses,

(c) $25,838.98 in telephone bills, office expenses and American Express charges,

(d) $26,515.35 in miscellaneous expenses,

(e) $309,252.19 in professional fees.

From the founding of Vencap through April 30, 1974, Vencap, Intervent and Intercapital have dispersed to or for Pistell as salary, advances, loans and expenses $1,456,-461.57 (loans of $645,000, compensation of $356,640.62 and expenses of $454,320.95).

Prior to the formation of Vencap, Pistell earned a finders fee of $150,000 in connection with the transfer of IIT money for financing a Vesco business deal in Costa Rica. Pistell testified before this Court in April, 1973 in another matter that in July, 1972 he transferred $100,000 of this amount to Vencap for startup costs and it was not a loan by him to Vencap. Thereafter in May, 1973, Vencap entered into an agreement with Pistell that retroactively characterized the July, 1972 investment as a loan. This came about when Blackman, director and Executive Vice President of Vencap, proposed to the Board of Directors that the $100,000 be shown as a loan by Pistell to Vencap and the proposal passed.

Vencap has been used to aid in the financing of other companies in which defendants have or had an interest. Vencap loaned Chibex, a Canadian gold mine corporation, $155,000 and received options for 75,000 shares of Chibex at $1.00 per share and 75,000 shares of Chibex at $1.50 per share. Chibex is controlled by Conservative Capital which, in turn, is controlled by Pistell and Blackman. Fund of Funds, an IOS Dollar Fund, has the right to cause Vencap, upon three days' notice, to purchase 500,000 shares of Chibex stock at $1.00 per share. Vencap's interest in Chibex is

minimal. Vencap has an option on 150,000 shares of Chibex stock which would give Vencap only about a 3% interest in Chibex. By contrast, Pistell and Blackman (through Conservative Capital) own over 50% of Chibex. Pistell testified in April 1973 that his "main interest" was Chibex. Pistell is President, Chairman and Chief Executive Officer of Chibex.

Vencap invested $600,000 in Out Islands Airways. Murphy was a director of and part owner in Out Islands Airways.

Vencap deals currently in progress include: Vencap is 50 percent owner of Sangin, a corporation which is attempting to import Turkish wine into the United States, and Vencap is financing the spade work for a potential concession in the jungles of the Cameroons for diamonds, sapphires and gold.

Defendants Haven Wandless, Taylor, Murphy, Pistell, Vencap, Intervent and Intercapital all do and transact business in New York, New York and can be found for jurisdictional purposes within the Southern District of New York. Literally hundreds of transactions and pieces of mail for Vencap and to a lesser extent for Intervent and Intercapital were initiated, directed and consummated from and received at 99 Park Avenue. Pistell testified that 99 Park Avenue was his office and therefore it is effectively that of Vencap, Intervent and Intercapital. Vencap's financial records are maintained in the office of its accountants in Great Neck, Long Island. All the transactional records of Vencap were maintained at "the office" at 99 Park Avenue, New York, New York. On November 16, 1973, Pistell signed an Application Form for Certificate of Authority to do business in Louisiana stating that his address is 99 Park Avenue, New York, New York. Pistell spends much of his

business time in New York City purportedly on Vencap's business.

Pistell conducted the business of Vencap in the Southern District of New York during the material times in the allegations. A significant portion of the legal work performed by Taylor and Havens Wandless was done in the Southern District of New York.

This Court also finds that approximately 300 United States citizens and residents are fundholders in IIT, that the United States securities owned by IIT were kept by ANBT in New Jersey and that ANBT received instructions to transfer $3,000,000 from the sale of IIT's United States securities to the BCB account at ANBT in New Jersey. Then it caused the $3,000,000 to be transferred from the BCB account at ANBT to BCB in the Bahamas designated for Vencap and finally ANBT received and kept the certificates and warrant for Vencap preference shares in New Jersey. A substantial portion of this amount was thereafter invested by Vencap in United States securities.

Conclusions of Law.

This Court has jurisdiction over the subject matter of this action. Jurisdiction is based on §22(a) of the Securities Act of 1933, 15 U.S.C. §77v(a); Section 27 of the Securities Exchange Act of 1934, 14 U.S.C. §78aa; §1337 of the Judicial Code, 28 U.S.C. §1337. It is probable that jurisdiction is also founded on diversity of citizenship with an amount in controversy exceeding the sum of $10,000.00, exclusive of interest and costs, under §1332 of the Judicial Code, 28 U.S.C. §1332; §1350 of the Judicial Code, 28 U.S.C. §1350 (an action by an alien for a tort committed in violation of the law of nations or a treaty of the United States); §302 of the New York Civil Prac-

tice Law and Rules; and on the doctrine of pendent jurisdiction.

Pistell, Taylor, Murphy, Vencap, Intervent, Intercapital and Havens Wandless have engaged in Vencap's business activities a significant portion of which occurred in the United States or which have had a substantial and foreseeable impact on United States investors. *See Travis* v. *Anthes Imperial Ltd.*, 473 F.2d 515 (8th Cir. 1973); *Leasco Data Processing Equipment Corp.* v. *Maxwell*, 468 F.2d 1326 (2d Cir. 1972); *Schoenbaum* v. *Firstbrook*, 405 F.2d 200 (2d Cir. 1968), *rev'd. in part on other grounds*, 405 F.2d 215 (2d Cir. *en banc*, 1968), *cert. denied sub. nom. Manley* v. *Schoenbaum*, 395 U.S. 906 (1969); *Investment Properties Int'l.* v. *I.O.S. Ltd.*, 71 Civ. 37559 (S.D.N.Y. 1971) ['70-'71 Transfer Binder], CCH Fed. Sec. L. Rep. 193,011 at p. 90,734; *aff'd.* (unreported (2d Cir. 1971)).[2]

This Court has personal jurisdiction over defendants Pistell, Taylor, Murphy, Vencap, Intervent, Intercapital and Havens Wandless.

Based upon the above discussed facts, I conclude that the purpose of the three-page memorandum prepared at the instruction of Pistell on behalf of Vencap was to induce IIT to finalize its general inclination to invest $3,000,000 in Vencap in exchange for 30,000 preference shares.[3]

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[2] When, as here (1) much of the preparation of the actual documents which formed the basis of the allegedly fraudulent conduct occurred in the United States; and (2) one defendant, who owns and controls other defendants is a United States citizen and the plaintiff corporation has United States citizens and residents as shareholders, it appears that this Court has subject matter jurisdiction over such a matter.

[3] As noted above, the only other purpose which would reasonably explain this memorandum is that it was part of the conspiracy alleged and was prepared for the purpose of making the transaction look more technically like an arms-length one.

I further conclude that the plaintiffs have demonstrated that they will probably succeed in showing that the memorandum was false and misleading under the circumstances. That Vencap "proposes to offer on a very limited basis an aggregate initially of $3,000,000 in preferred shares . . . to a select group of sophisticated investors" who recognize that "risk deserves a high return . . ." is materially misleading in light of the agreement which was being prepared during the same period when the memorandum was prepared.

The statement that Vencap is contemplating "a broad investment base designed to offer . . . short and long term returns which will inure primarily to the benefit of the preferential capital investors" in Vencap is misleading in light of the one-sided agreement between Vencap and IIT and may even reach the level of common law fraud. Defendants' counsel stressed that the timing of the preparation of the purchase agreement and also of the three-page memorandum made the three-page memorandum but a "memorializing" of Pistell's "discussions with IIT as to the formation of Vencap, its objectives and the initial transaction in which it was interested." The facts not only do not support such a contention, but because of the proximity in the time of preparation of the agreement and the memorandum it is only reasonable to assume that Pistell knew that the terms of the agreement would not in any way allow Vencap's investments to "inure primarily to the benefit of the preferential capital investors" of Vencap. During the course of the preliminary injunction hearing, plaintiffs' counsel demonstrated that the terms of the agreement would allow Vencap to earn $500,000,000 and IIT to get only $180,000. (Transcript of hearing, pp. 766-7). The demonstration was based on an

accurate reading of the agreement. Counsel for defendants did not contest the accuracy of this characterization of the terms of the agreement.

In light of the circumstances, unless one infers a conspiracy in which case IIT knew everything that Pistell knew,[4] there were also substantial and material omissions from the three-page memorandum. The three-page memorandum failed to disclose that the preference shareholders could receive only one-third of the net gain of Vencap and then only at the pleasure of the holders of the ordinary shares, Pistell and Blackman. It also failed to disclose that Pistell was in severe financial trouble and owed the United States government more than $500,000 in back taxes and that the United States government had imposed a lien on Pistell's property. The memorandum made no disclosure that a substantial portion of the money invested by IIT in Vencap would be used to secure a $590,000 loan by Intercapital to Pistell personally, for the personal benefit of Pistell, i.e., to pay his back taxes owed to the United States government, and the fact that much of the cash transferred to Vencap by IIT would be turned over to companies in which Pistell had a substantial personal interest.

There is evidence that Pistell has utilized the assets of IIT for his own personal benefit and has, through an excessive salary and compensation agreement, in addition to gross expenditures, wasted the assets of IIT. There is also an allegation by plaintiffs that the investment by IIT of $3,000,000 was part of a conspiracy to siphon money from

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[4] Such an inference is not unreasonable in light of the fact that lawyers were representing both parties. There was testimony that the agreement reached between IIT and Vencap created practically inverse rights as between the investor and the management corporation when compared with usual investment agreements, even in high risk venture capital investments.

IIT and its shareholders into the hands of the alleged conspirators: Pistell, Vesco, LeBlanc, Meissner and Graze. There is insufficient evidence in the record as to those allegations to have them serve as a basis for the issuance of a preliminary injunction.

However, I conclude that plaintiffs have otherwise demonstrated a likelihood that they will prevail on the merits. In connection with the purchase of the non-voting Vencap securities, the defendants Pistell, Blackman and Vencap violated §17(a) of the Securities Act of 1933, §10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder in that they directly or indirectly employed devices to defraud, made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in business practices which operated as a fraud and deceit upon IIT.

Plaintiffs have also demonstrated that they will be irreparably harmed. If the continued outflow of money is allowed to continue, there will be no assets left to satisfy a final judgment against defendants. Plaintiffs have also demonstrated that the loss of the remaining assets is a much greater risk and hardship than the damages which defendants contend they will sustain if a preliminary injunction is issued. The findings reflect that Pistell and Blackman each have a $2,000 investment in Vencap and they have agreed to sell to each other, if either dies or his employment is terminated, their 50% interest for $5,000. The particular ventures of Vencap which may be destroyed by the issuance of a preliminary injunction are too remote to outweigh the actual losses and continuing losses of IIT while Pistell continues to control Vencap. The Vencap in-

terest in Chibex is small and Pistell's interest is unrelated to the proceeding before this Court. Therefore, under this Circuit's standards for the issuance of a preliminary injunction plaintiffs have met their burden. *See Gulf & Western Industries, Inc.* v. *Great A. & P. Tea Co.*, 476 F.2d 687 (2d Cir. 1973); *Checker Motor Corp.* v. *Chrysler Corp.*, 405 F.2d 319 (2d Cir. 1969).

Order

It is therefore hereby

ORDERED that defendants Vencap, Ltd., Intervent, Inc., Intercapital, N.V. and Richard C. Pistell, their agents and employees, those acting in concert with them, the agents and employees of those acting in concert with them and those having notice of this preliminary injunction be enjoined from expending, dissipating, reducing, encumbering, investing, transferring and exercising any control over the present and future assets of IIT, Vencap, Ltd., Intervent, Inc. and Intercapital, N.V. until such time as the order may be modified or the within action shall be finally determined; and its is further

ORDERED that the undertaking previously filed by plaintiffs in the amount of $10,000. be increased to $50,000. for the payment of such costs and damages as may be incurred or suffered by Vencap, Intervent, Intercapital or Pistell if it is found that they were enjoined wrongfully; and it is further

ORDERED that Arnold I. Burns, 445 Park Avenue, New York, New York, be appointed receiver herein to take charge of all present and future assets of IIT, Vencap, Intervent and Intercapital, now in the possession and con-

trol of Pistell, Vencap, Intervent and Intercapital or which shall subsequently come into their possession or control until this Order is modified or until a final determination has been rendered in this matter; and it is further

ORDERED that such receiver be directed to take an accounting of past expenditures of Pistell, Vencap, Intervent and Intercapital, and recoup for the benefit of plaintiffs herein any assets of Vencap, Intervent or Intercapital which have previously been wrongfully or improperly dispersed; and it is further

ORDERED that the parties come before this Court within ten days of the date of this Order with any proposed modifications of this Order; and it is further

ORDERED that such receiver be required to take an oath swearing to faithfully perform his duties in such manner and form as is required by the Rules of this Court;

ORDERED that such receiver shall file an undertaking in the amount of $25,000 in the form required by the Rules of this Court by July 10, 1974 at 4:00 o'clock in the afternoon of that day for the payment of such costs and damages as may be incurred by any of the appearing parties herein as a result of said receiver's misfeasance of his duties.

So ORDERED.

Charles Stewart
United States District Judge

Dated: New York, N. Y.
July 3, 1974.

Exhibit A attached to Opinion and Order of Stewart, J., dated July 3, 1974

VEN-CAP LIMITED

P.O. Box N 4645 Nassau, Bahamas
Telephone 21381

RICHARD C. PISTELL
Chairman of the Board

The within Memorandum is submitted in connection with the private placement of securities referred to herein and may not be reproduced or used in whole or in part for any other purpose.

To: International Capital Investments (Sterling) Limited
5 Crafton Street,
London W.1.

Attention: Mr. Stanley Graze

Private placement of Preferential Shares of Ven-Cap Limited, 30,000 Redeemable Preference Shares of US$100 each plus three year warrants to purchase a further 30,000 of such shares.

Ven-cap Limited ("the Company") is a non-resident Bahamian company formed under The Companies Act of the Bahamas and designated as such in accordance with Section 41(2) of the Exchange Control regulations of the Bahamas. Exchange Control permission for the incorporation of the Company and the issuance of shares under Regulation 8 has been obtained from the Bahamian Momentary Authority.

The Company was initially formed of a nominal capital of US$5,000 with ordinary common shares of US$1 par

being issued therefor. A total of 5,000 such shares are authorized and outstanding. The primary purpose for organizing the Company was to afford a vehicle for knowledgeable investors of a limited number to participate through 'preferential capital investment' in a sophisticated investment program with respect to growth opportunities throughout the world. Management (see this topic below) offers a broad international and financial experience in venture capital programs. The Company's purpose and philosophy are directed toward the sound investment of preferential capital utilizing management's contacts and experience in growth opportunities which are designed to reflect both short and long term returns on investment.

The principal stockholders of the Company are: Amaury de Riencourt, an internationally known Investment Banker and Counsellor, resident in Paris and Richard C. Pistell, another internationally known Investor, Financial Consultant and Manager whose broad experience includes airline financing.

In addition, the Company is currently negotiating for the acquisition of an equity and debt position in a leading Caribbean air carrier with routes into Miami and other ports in Florida. Such an air carrier, whose name cannot at this juncture be disclosed pending conclusion of negotiations, is on the verge of introducing jet service to certain of its domestic and foreign routes. But, significantly, even in the absence of jet service with which it must compete with such international carriers as Pan Am and Eastern, such carrier has earned in excess of $350,000 in the past six months commencing March of 1972. The Company is contemplating an investment consisting of debt and equity of up to $1,500,000 which it believes will significantly

contribute to the strengthening of operations and earnings of the air carrier and offers real prospects for early and substantial return on the Company's investment. This is just one of the several outstanding prospects which the Company is contemplating and which, through the utilization of the initial preferential capital investment of assets acquired therewith, will enable the Company to establish a broad investment base designed to offer, as noted above, short and long term returns which will inure primarily to the benefit of the preferential capital investors. The Company proposes to offer as a very limited basis an aggregate initially of $3,000,000 in preferred shares. The capital realized from such offering is what is herein referred to as the 'preferential capital investment'. The preferential rights attributable to such shares are set forth in a resolution of the Company dated 31st August, 1972, a copy of which is annexed hereto. In outline, however, such preferential shares will have dividend entitlement of 6 per cent payable as and when declared by the Board of Directors at the end of each fiscal year to the extent earnings are available therefor plus an additional dividend of up to one-third of the residual earnings, i.e., the net earnings after all expenses and taxes and the payment of the initial 6 per cent dividend.

In addition, subscribers to the preferred shares will receive warrants entitling them to subscribe for a period of three years on a pro rata basis to an additional $3,000,000 in preferred shares of the same class and preference as the initial subscription and at the same price notwithstanding that the book value or earnings of the Company at the time of the exercise of such warrants might otherwise require a higher price.

Exhibit A Attached to Opinion and Order of Stewart, J., dated July 3, 1974

Inasmuch as this limited offering is being made to a select group of sophisticated investors it is perhaps unnecessary to point out that notwithstanding the solid management experience and background which the Company offers at this early stage in its development any investment must be viewed as speculative. The Company is aware that investment of the type herein offered is not for the ordinary investor but for the investor who recognizes that risk deserves a high return.

Order per Stewart, *J.*, dated September 30, 1974 modifying Opinion and Order dated July 3, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 2504

IIT, et al.,

Plaintiffs,

—against—

VENCAP, LTD., et al.,

Defendants.

The following changes are to be made in the opinion and order dated July 3, 1974:

Page 16 of the opinion and order, first full paragraph, reads as follows:

> Vencap invested $600,000 in Out Island Airways. Murphy was a director and part owner in Out Island Airways.

The above language should be changed to read:

> At or about the time Out Island Airways Limited was acquired by the Bahamian government, Vencap's investment in Out Island Airways Limited was paid in full, together with interest at 9% per annum and 6000 shares of Turks and Caicos Airways Limited.

On page 18 of the opinion and order, bottom paragraph, the first sentence reads as follows:

Order per Stewart, J., dated September 30, 1974 modifying Opinion and Order dated July 3, 1974

> Pistell, Taylor, Murphy, Vencap, Intervent, Intercapital and Havens, Wandless have engaged in Vencap's business activities a significant portion of which occurred in the United States or which have had a substantial and foreseeable impact on United States investors.

The language which is now ordered to be substituted for the above reads as follows:

> Pistell, Taylor, Murphy, Vencap, Intervent, Intercapital and Havens, Wandless have engaged in activities, a significant portion of which occurred in the United States or which have had a substantial and foreseeable impact on United States investors.

So ORDERED.

CHARLES STEWART
United States District Judge

Dated: New York, N. Y.
September 30, 1974.

973A

Order per Stewart, *J.*, dated September 3, 1974 permitting Vencap to issue checks in the total sum of $40,000 in connection with obtaining the so-called Cameroon Concession

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IIT, an International Investment Trust, et al.,

Plaintiffs,

—against—

VENCAP, LTD., et al.,

Defendants.

An Order having been made by this Court directing the defendants Vencap, Intervent, Intercapital and Pistell to provide the Receiver herein with a statement and explanation respecting a mining concession in the Cameroons, further Ordering the Receiver to evaluate the said proposal and make his recommendations to this Court, and further Ordering that any payments with respect to this venture not be paid without the approval of this Court;

And the said defendants having presented to the Receiver and the Court proposed expenditures in connection with the Cameroon concession;

And counsel for the defendants having moved this Court on August 27, 1974 so as to allow the defendant Vencap, Ltd. to make said expenditures; it is hereby

974A

Order per Stewart, J., dated September 3, 1974 permitting Vencap to issue checks in the total sum of $40,000 in connection with obtaining the so-called Camcroon Concession

ORDERED, that Vencap, Ltd. be permitted to issue checks in the total sum of $40,000 in connection with obtaining the so-called Cameroon concession.

Dated: New York, New York
September 3, 1974

.....

U.S.D.J.

975A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. FILED COURT
OCT 1
S.D.N.Y.

IIT, et al.,

Plaintiffs,

-against-

Vencap, Ltd., et al.,

Defendants.

74 Civ. 2504

ORDER

MICROFILM
OCT 1 1974

The Findings of Fact and Conclusions of Law as well as all other documents pertaining to this case which were ordered sealed are hereby released, except for the in camera testimony of June 20, 1974 at transcript pages 672 through 700-A which has been withdrawn by defendant.

SO ORDERED.

Charles H. Tenney
United States District Judge

Dated: New York, N.Y.
September 30, 1974.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IIT, et al.

Plaintiffs,

-against-

Vencap, Ltd., et al.

Defendants.

----------x

976A

74 Civ. 2504 (CES)

ORDER TO SHOW CAUSE

Upon the annexed affidavit of Leon B. Kellner, Esq. sworn to on September 27, 1974, and upon all prior papers and proceedings had herein, and sufficient cause being shown, it is

ORDERED the certain defendants SHOW CAUSE, at a term of this Court, to be held in Room 2402, United States Courthouse, Foley Square, in the County, City and State of New York, on the 1st day of October at 3:30 o'clock or as soon thereafter as counsel may be heard, why an order should not be made and entered herein staying the order of this Court dated September 3, 1974 permitting Vencap to issue checks in the sum of $40,000 in connection with the so-called Cameroons concession pending the disposition of plaintiffs' appeal to the United States Court of Appeals for the Second Circuit; and it is further

ORDERED, that the personal service of a copy of this Order and the papers upon which it is granted upon Havens, Wandless, Stitt & Tighe, attorneys for certain defendants and upon Schwartz, Burns, Lesser & Jacoby, attorneys for the Receiver on or before ~~October~~ Sept 30, 1974 at 5 p.m. be deemed good and sufficient service thereof.

DATED: New York, New York

Charles E. Stewart Jr.

United States District Judge

Issued at Sept 30, 1974
3:45 p.m.

SOUTHERN DISTRICT OF NEW YORK

IIT, et al.	:	977A
Plaintiffs,	:	
-against-	:	74 Civ. 2504 (CES)
Vencap, Ltd., et al.	:	
Defendants.	:	

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

Leon B. Kellner being duly sworn deposes and says:

1. I am a member of the firm of Anderson Russell Kill & Olick, P.C., attorneys for the plaintiffs herein and make this affidavit in support of the plaintiffs' motion for a stay of the order entered on September 3, 1974 ordering that Vencap, Ltd. be permitted to issue checks in the amount of $40,000 in connection with obtaining the so-called Cameroon concession.

2. The so-called Cameroon concession is another of the "pie in the sky" deals utilized by the defendant, Richard C. Pistell, to quickly dissipate the $3,000,000 that was fraudulently transferred to Vencap, Ltd. from IIT, an International Investment Trust.

3. By order dated July 3, 1974 and as subsequently amended, this court appointed Arnold I. Burns, Esq. as receiver for Vencap, Ltd. and its related companies, Intervent, Inc. and Intercapital,N.V. The receiver's mandate provides, inter alia that:

> "the Receiver be authorized to compensate Pistell for the reasonable value of any services rendered, and for the expenses incurred, by Pistell in negotiating and evolving investments for Vencap, Intervent and Intercapital and in reporting on such projects to the receiver provided the

Receiver is apprised in advance of and approves such contemplate expenditures prior to their incurrence. Any application for payment to Pistell for compensation or expenses shall be submitted by the Receiver to this Court for its approval;..."

978A

4. At a hearing before this court on August 27, 1974, the Receiver advised this Court that he approved the contemplated expenditure on the ground that the case was close to settlement and further stated that the approval was not on the merits of the expenditure.

5. Subsequent to the aforementioned hearing, the settlement discussion proved unsuccessful. The Receiver's approval was based on a condition subsequent which has failed to materialize and the request for authorization should be re-submitted to the receiver for approval on the merits of the expenditure.

6. The plaintiffs request a stay of the September 3, 1974 order because of the irreparable harm it will cause to plaintiffs. As shown by the evidence adduced at trial, the assets of Vencap are being dissipated in ever increasing amounts and the only hope of recovery that plaintiffs have is for the assets to be conserved rather than expended. If the $40,000 in checks are issued prior to a decision of the Court of Appeals there would be virtually no recourse to any other funds for compensation.

7. The factual bases for plaintiffs' opposition to the payment and in support of this motion for a stay are set forth in greater detail in the affidavit of Eugene R. Anderson dated July 30, 1974, a copy of which is attached.

8. Certain of the defendants have appealed from the July 3, 1974 Order of this court granting plaintiffs' motion for preliminary injunction. Plaintiffs will ask the Court of Appeals to consolidate both appeals thus the diligence with

which the matter is handled in the appellate court will be largely within Vencap's control.

9. A bond is not required for this stay because the plaintiffs obtained a bond at the outset of this action.

Leon B. Kellner

Sworn to before me
this 27day of September, 1974

LEONA MOSS
NOTARY PUBLIC, State of New York
No. 41-9029145
Qualified in Queens County
Commission Expires March 30, 19...

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

980A

- x

IIT, et al.,

Plaintiffs,

-against-

VENCAP, LTD., et al.,

Defendants.

74 Civ. 2504 (C.E.S.)

AFFIDAVIT

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

EUGENE R. ANDERSON, being duly sworn, deposes and says:

1. I am a member of the firm of Anderson Russell Kill & Olick, P.C., counsel to the plaintiffs. I make this affidavit in partial opposition to the proposed modifications of the preliminary injunction which have been suggested by the Receiver, Arnold I. Burns.

DEFENDANTS ARE APPARENTLY
NOT INTERESTED IN MODIFYING
THE PRELIMINARY INJUNCTION

2. Almost immediately after the Court suggested that the parties get together with respect to a modification of the preliminary injunction, I wrote to counsel for the defendants suggesting that he call us with his suggestions. A copy of my letter is enclosed as Exhibit A. We have never received any response to our overture. Based on this apparent lack of interest on the defendants' part, plaintiffs respectfully request that there be no modification of the preliminary injunction.

DEFENDANTS HAVE FAILED AND NEGLECTED TO SUBSTANTIATE EXPENDITURES HERETOFORE MADE WITH THIS COURT'S PERMISSION AND THEREFORE SHOULD NOT BE PERMITTED TO MAKE FURTHER EXPENDITURES - 981A

3. As a result of an application by the defendants, the temporary restraining order was modified to permit the defendants to make four payments aggregating $33,998.19. This was done on the express understanding both on and off the record that these four expenditures would be substantiated. Mr. Oram stated:

> "That, your Honor, is an amount in the aggregate of $33,998.19. We understand that on Monday morning we would supply your Honor with confirmation with respect to the purchase of the stock and any other bills which aggregate the amounts that we talked about here." (Transcript, p. 94.)

4. It has been over a month since that commitment was made and if any bills or other substantiation was submitted to the Court, no copy was received by counsel for the plaintiffs. This casual approach to money and commitments to the Court evidences a lack of interest on the part of the defendants in obtaining further funds.

PISTELL SHOULD NOT RECEIVE FURTHER COMPENSATION FOR "SERVICES" RENDERED TO VENCAP

5. As this Court found:

> "From the founding of Vencap through April 30, 1974, Vencap, Intervent and Intercapital have dispersed to or for Pistell as salary, advances, loans and expenses $1,456,461.57 (loans of $645,000, compensation of $356,640.62 and expenses of $454,320.95)." (July 3, 1974 Opinion and Order, pp. 14-15.)

Plaintiffs submit that Mr. Pistell has been more than amply compensated by Vencap for his purported services. In this regard it is worth noting that Mr. Pistell has testified that "his

'main interest' was Chibex". (July 3, 1974 Order and Opinion, p. 16.)

6. A further, and plaintiffs submit, dispositive reason for refusing any further compensation to Pistell is that he is the beneficial owner of at least 50% of the ordinary stock of Vencap and, as such, stands personally to gain the most from any profits made by Vencap. As the principal beneficiary of any Vencap gains, Mr. Pistell should be willing and even anxious to devote some small part of his time away from his main interest, Chibex.

7. Mr. Pistell testified in SEC v. Vesco as follows:

> "Q And could you give us an estimate of what your family net worth is today?
>
> A My family net worth is in excess, I guess, of several millions of dollars.
>
> Q Is that all as a result of your efforts as a financier and venture capitalist?
>
> A I would say most of it, yes." (Exhibit 12 at pp. 2466-2467.)

Plaintiffs submit that it borders on the ridiculous to suggest that an individual of Mr. Pistell's alleged wealth, with his substantial equity interest in Vencap, would even ask to be further compensated for services.

NO FURTHER FEES SHOULD BE PAID TO HAVENS, WANDLESS, STITT & TIGHE AT THIS TIME

8. The evidence at the hearing on preliminary injunction shows that in the brief corporate history of Vencap, it has paid Havens, Wandless, Stitt & Tighe $263,784.03 (Exhibits 14-31 and 32). In view of the fact that, as Mr. Pistell testified, the $3,000,000 fund was mostly invested in marketable securities

legal fees and expenses of this magnitude seem somewhat high. Under all the circumstances, plaintiffs respectfully suggest that Messrs. Havens, Wandless, Stitt & Tighe wait for any further remuneration until a resolution of this litigation.

CONCLUSION

9. The modifications suggested by the Receiver are acceptable to plaintiffs with the exception of the portions permitting payments to Mr. Pistell or Havens, Wandless, Stitt & Tighe.

Eugene R. Anderson

Sworn to before me this
30th day of July, 1974.

Notary Public
LEON B. KELLNER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-4506797
Qualified in New York County
Term Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

984A

IIT, an INTERNATIONAL INVESTMENT TRUST, et al,

Plaintiffs,

- against -

VENCAP, LTD., et al,

Defendants,

74 Civ. 2504

NOTICE OF SETTLEMENT

S I R S :

PLEASE TAKE NOTICE that the within Order will be presented to Hon. Charles E. Stewart, Jr., United States District Judge, Southern District of New York, for settlement and signature on the 25th day of October, 1974 at 9:30 o'clock in the forenoon of that day, at Room 2602, United States District Court, Southern District of New York, Foley Square, New York, New York.

Dated: New York, New York
October 23, 1974

Yours, etc.

SCHWARTZ, BURNS, LESSER & JACOBY
Attorneys for Arnold I. Burns,
Receiver
Office and P.O. Address
445 Park Avenue
New York, New York 10022

By _____
A Member of the Firm

TO: Eugene R. Anderson, Esq.
Anderson, Russell, Kill & Olick
600 Fifth Avenue
New York, New York 10020

John C. Oram, Jr., Esq.
Havens, Wandless, Still & Tighe
99 Park Avenue
New York, New York 10016

Peter Leisure, Esq.
Curtis, Mallet - Privost, Colt & Mosle
100 Wall Street
New York, New York 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

985A

IIT, an INTERNATIONAL INVESTMENT TRUST, et al,	:	
Plaintiffs,	:	74 Civ. 2504
- against -	:	
VENCAP, LTD., et al,	:	ORDER AUTHORIZING PAYMENT OF SALARY AND EXPENSES BY RECEIVER
Defendants.	:	

Upon the annexed Petition of Arnold I. Burns, Receiver of the assets of defendants IIT, Vencap, Ltd., Intervent, Inc., and Intercapital, N.V., dated October 22, 1974, recommending that Vencap, Ltd. loan $22,967.12 to Sangin, Inc. to be utilized to reimburse H. Jeff Kokdemir, President of Sangin, Inc., for salary due and expenses incurred by Mr. Kokdemir in connection with the business of Sangin, Inc., and sufficient cause appearing to me therefor, it is

ORDERED that Arnold I. Burns be, and he hereby is, authorized to cause Vencap, Ltd. to loan $22,967.12 to Sangin, Inc. to be utilized to reimburse H. Jeff Kokdemir, President of Sangin, Inc., for salary from July 1 through November 30, 1974, as well as his business expenses from July 1 through September 20, 1974.

New York, New York
October , 1974

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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986A

IIT, an INTERNATIONAL INVESTMENT TRUST, et al,

Plaintiffs,

- against -

VENCAP, LTD., et al,

Defendants.

74 Civ. 2504

PETITION OF RECEIVER

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The Petition of ARNOLD I. BURNS respectfully represents:

1. Petitioner was duly appointed Receiver herein, to take charge of all present and future assets of IIT, Vencap, Ltd., Intervent, Inc., and Intercapital, N.V. in the possession of Richard C. Pistell, Vencap, Intervent and Intercapital by Order of this Court, dated July 3, 1974. On July 15, 1974, Petitioner qualified as Receiver by filing his oath and the bond required in the sum of $25,000, and is currently acting as such Receiver.

2. Pursuant to a supplemental order of this Court, dated August 2, 1974, (the "Supplemental Order"), defendants Pistell, Vencap, Intervent and Intercapital were directed to provide me, as Receiver, with written reports detailing current projects of said corporations, including the proposed investment of Sangin, Inc., ("Sangin") a corporation formed to exploit the exclusive export rights to the United States for wines produced by the Turkish State Monopoly. Also pursuant to the Supplemental Order, I am to evaluate the proposed investments and to report to the Court my recommendations with respect thereto. Similarly, any and all claims for expenses incurred on behalf of Vencap's business activities are to be

submitted to me in writing for my consideration and ultimate recommendation to the Court.

3. This petition is directed to a request that Vencap loan $22,967.12 to Sangin to be utilized to reimburse H. Jeff Kokdemir ("Kokdemir"), President of Sangin, for salary due for the months of July through November, 1974, as well as expenses incurred from July 1, 1974 through the present date.

4. As the Court is aware, Sangin, a Florida corporation of which 51% is owned by Vencap, was formed for the express purpose of obtaining and, subsequently, exploiting the exclusive export rights to the United States for the wines produced by the Turkish State Monopoly. On September 16, 1974, I received a letter from Richard C. Pistell ("Pistell"), seeking reimbursement to Kokdemir for his past salary and expenses incurred. Pursuant to an Agreement between Kokdemir, Vencap and Sangin, Kokdemir became, effective April 1, 1974, a full time employee of Sangin at a monthly salary of $2,500. and Vencap agreed to lend, or cause to be loaned, to Sangin proceeds sufficient to cover Kokdemir's salary expenses. Of the approximately $23,000 requested by Kokdemir, $12,500 relates to such salary expenses. The aproximately $10,000 remaining relates to business and travel expenses incurred by Kokdemir on behalf of Sangin (and Vencap).

5. On October 8, 1974, I met with Kokdemir in Miami, Florida, and discussed the salary and expense reimbursement request with him. At such time, I learned that Kokdemir is an American citizen of Turkish birth and language, having well placed relatives in Turkey. Kokdemir's standing in Turkey was undoubtedly an aid in his obtaining the exclusive export rights to the United States of the wine produced by the Turkish State Monopoly. Kokdemir explained to me that he had spent the

better part of the last five months actively promoting the wine concession. He specifically noted that he was meeting with substantial success in obtaining orders for the wine and was on the verge of obtaining the license necessary to import the wine into this Country. After meeting with Kokdemir I was impressed by the fact that he had been proceeding, to date, pursuant to his agreement with Vencap and had incurred all expenses requested (for which back-up vouchers have been provided to and reviewed by me) in an earnest effort to obtain the necessary import license, firm-up orders for the Turkish wine, and move ahead with the project.

6. Upon my return to New York, I met with Pistell and discussed with him the Kokdemir-Sangin situation. I advised Pistell that the next order of business insofar as Sangin was concerned was for Kokdemir to travel to Turkey and to place firm orders with the Turkish State Monopoly. I noted that the Turkish government required full cash payments to accompany all orders. In this regard, Pistell agreed to expend every effort to obtain the bank letters of credit needed by Kokdemir to further finance the project; he said he was sure he could provide the necessary financing.

7. After reviewing the material forwarded to me by Kokdemir in substantiation of the salary and expenses requested and based upon Pistell's undertaking to obtain the necessary bank financing for the project, I am hereby recommending to this Court that the $22,967.12 sought by Kokdemir should be paid to him. Included in this $22,967.12 figure, is a $2,500 advance for his November salary, the bulk of which is to be used to finance a trip to Turkey which Kokdemir plans to make in the immediate future to attempt to tie-up the loose ends

relating to the wine import transaction. It is my view that failure to reimburse Kokdemir for his salary and expenses might be deemed to be in contravention of the agreement between Vencap, Sangin and Kokdemir (in this regard, his attorney has already made a demand letter for such sums). Furthermore, without Kokdemir at the helm of the project, any chance for having the Sangin opportunity come to fruition and inure to the benefit of Vencap may well be lost. To fail to honor his contract at this time might subject Vencap to a costly lawsuit, and could, it is submitted, bring to an abrupt termination the Sangin business investment just at the juncture at which a reasonable chance of success appears possible.

WHEREFORE, Petitioner recommends to this Court that Vencap loan $22,967.12 to Sangin to be utilized to honor the salary and expense request submitted by H. Jeff Kokdemir.

/s/
Arnold I. Burns

SWORN to the 31st day of
October, 1974.

/s/ Cynthia Barnett
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

990A

----------x

IIT, et al.,

Plaintiffs,

-against-

Vencap, Ltd., et al.,

Defendants.

74 Civ. 2504 (CES)

Affidavit

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STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

Leon B. Kellner being duly sworn deposes and says:

1. I am a member of the firm of Anderson Russell Kill & Olick, P.C., attorneys for the plaintiffs, and I am fully familiar with the facts of this case.

2. On October 24, 1974, this firm was personally served with a Notice of Settlement, Proposed Order and Supporting Petition of Arnold I. Burns, the court appointed Receiver for Vencap, Ltd. The hearing was scheduled for October 25, 1974.

3. The Petition and Order requested that the Receiver be permitted to lend $22,967.12 to Sangin, Inc. ("Sangin"), a Florida corporation. The funds are to be utilized by Sangin to pay H. Jeff Kokdemir, President of Sangin for salary and expenses incurred by Mr. Kokdemir for the period from July 1, 1974 through November, 1974 in connection with the business of Sangin. Sangin is attempting to obtain a wine concession from the Turkish Wine Monopoly for the importation of Turkish wine into the United States. It is our understanding that 51% of the stock of Sangin is owned by Vencap, Ltd.

4. Sangin represents another "pie-in-the-sky" deal with which the defendant, Richard C. Pistell, has dissipated

Vencap's assets. The plaintiffs are opposed to any further expenditures of Vencap's assets for these deals. Further, before any payments of this nature are approved by this court, we believe that there should be a hearing upon sufficient notice to all the parties. Moreover, there should be made available full documentation supporting the proposes for the payment as well as documentation supporting the reasonableness of the transaction pursuant to which the payments are to be made.

5. In this instance, however, we have been assured by the Receiver and his counsel, Herbert P. Jacoby, that the Receiver had reviewed the Sangin transaction and the proposed loan and is satisfied that there is a possibility that a profit will be made which will inure to the benefit of Vencap, Ltd. Additionally, we have been informed that the Receiver believes that the loan is a proper expenditure by Vencap, Ltd., is required by existing contractual arrangements between Vencap and Sangin and that Vencap will not be responsible to provide any additional Sangin financing necessary to purchase the wine.

6. In the aforementioned circumstances, and based particularly on the assurances of the Receiver, we did not oppose this application for the Order approving payment to Sangin. However, we do not waive any of our rights in respect of any loans to Sangin or any payments that may be proposed to be made by Vencap, Ltd. in the future.

Leon B. Kellner

Sworn to before me this
31st day of October, 1974.

NOTARY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

IIT an International Investment Trust, et al.,

Plaintiffs,

-against-

VENCAP, LTD., INTERVENT, INC., INTER-CAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants.

- -x

992A

74 CIV. 2504 (CES)

ORDER

An Order having been made by this Court that all claims for future services rendered to or expenses incurred by the defendants Vencap, Ltd., Intervent, Inc., and Intercapital, N.V. be submitted in writing to the Receiver for his consideration and recommendation, but that same shall not be paid without the approval of this Court;

And the said defendants having presented to the Receiver and the Court an Application for an Order directing the Receiver to pay for certain and reasonable legal fees and expenses to be rendered by proposed incoming counsel for said defendants;

And a hearing having been held in connection therewith on the 7th day of November, 1974; it is hereby

ORDERED that the Receiver herein, Arnold I. Burns, Esq. be, and he hereby is, authorized and directed to cause the defendant Vencap, Ltd. to pay to the firm of Paley & Miller

reasonable sums of money as incurred for disbursements in the course of the defense of said defendants for appeal only and pending further order of this Court; and it is hereby

FURTHER ORDERED that the Receiver, Arnold I. Burns, Esq. be, and he hereby is, authorized and directed to cause Vencap, Ltd. to pay to the said Paley & Miller further sums from time to time as and for legal fees for said defendants for the purposes of the pending appeals, upon submission of appropriate statements requesting payment of same, after determining the reasonableness thereof, and after approval by this Court.

Dated: New York, N. Y.
November 12, 1974

s/ Charles L. Stewart Jr.
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

994A

IIT, an International Investment Trust, and Georges Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIT, an International Investment Trust,	74 Civ. 2504 (CES)
Plaintiffs,	
- against -	
VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,	NOTICE OF APPEAL 74-1969
Defendants.	

Notice is hereby given that the defendants Vencap, Ltd., Intervent, Inc., Intercapital, N.V., and Richard C. Pistell hereby appeal to the United States Court of Appeals for the Second Circuit from an Order entered in the Office of the Clerk of the United States District Court for the Southern District of New York on the 5th day of July, 1974 granting plaintiffs' motion for a preliminary injunction and ordering that defendants Vencap, Ltd., Intervent, Inc., Intercapital, N.V. and Richard C. Pistell, their agents and employees, those acting in concert with them, the agents and employees of those acting in concert with them and those having notice of this preliminary injunction be enjoined from expending, dissipating, reducing, encumbering, investing, transferring and exercising any control over the present and future assets of IIT, Vencap, Ltd., Intervent, Inc. and Intercapital, N.V. until such time as the Order may be modified or the

within action shall be finally determined; that the plaintiffs file an undertaking in the amount of $50,000; that Arnold I. Burns be appointed a receiver and that such receiver be directed to take an accounting of past expenditures of Pistell, Vencap, Intervent and Intercapital, and recoup for the benefit of plaintiffs herein any assets of Vencap, Intervent or Intercapital which have previously been wrongfully or improperly dispersed.

July 8, 1974

HAVENS, WANDLESS, STITT & TIGHE

By _____
A Member of the Firm

Attorneys for Defendants
Vencap, Ltd., Intervent, Inc.,
Intercapital, N.V., Richard C.
Pistell, Charles E. Murphy, Jr.,
David Taylor and Havens, Wandless,
Stitt & Tighe
Office & P. O. Address:
99 Park Avenue
New York, New York 10016
(212) 986-5550

To:

Clerk of the Court

Anderson Russell Kill & Olick, P. C.
Attorneys for Plaintiffs
Office & P. O. Address:
Rockefeller Center
600 Fifth Avenue
New York, New York 10020
(212) 541-8100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

996A

IIT, et al.	:	
Plaintiffs,	:	74 Civ. 2504 (CES)
-against-	:	NOTICE OF APPEAL
Vencap, Ltd., et al.	:	
Defendants.	:	

NOTICE is hereby given that, IIT, an International Investment Trust, Georges Baden, Jacques Delvaux and Ernest Lecuit as liquidators for IIT, an International Investment Trust, the plaintiffs herein, hereby appeal to the United States Court of Appeals for the Second Circuit from an order entered on September 3, 1974 permitting Vencap, Ltd., a defendant herein to issue checks in the amount of $40,000 in connection with obtaining the so-called cameroon concession.

DATED: September 27, 1974

ANDERSON RUSSELL KILL & OLICK, P.C.

By _____

A Member of the Firm
Attorneys for the Plaintiff
630 Fifth Avenue
New York, New York 10020
(212) 397-9700

To: Clerk of the Court
United States District Court
Southern District of New York
Foley Square
New York, New York

John C. Oram, Esq.
Havens Wandless Stitt & Tighe
Attorneys for Certain Defendants
99 Park Avenue
New York, New York

Herbert P. Jacoby, Esq.
Schwartz, Burns, Lesser & Jacoby
Attorneys for the Receiver
445 Park Avenue
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

998A

IIT, an International Investment Trust, and Georges Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIT, an International Investment Trust, Plaintiffs,	74 Civ. 2504 (CES)
-against-	NOTICE OF APPEAL
VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE, Defendants.	

Notice is hereby given that the defendants Charles E. Murphy, Jr., David Taylor and Havens, Wandless, Stitt & Tighe hereby appeal to the United States Court of Appeals for the Second Circuit from an Order entered in the Office of the Clerk of the United States District Court for the Southern District of New York on the 1st day of October, 1974, granting plaintiffs' motion for a preliminary injunction and ordering that defendants Vencap, Ltd., Intervent, Inc., Intercapital, N.V. and Richard C. Pistell, their agents and employees, those acting in concert with them, the agents and employees of those acting in concert with them and those having notice of this preliminary injunction be enjoined from expending, dissipating, reducing, encumbering, investing, transferring and exercising any control over the present and future assets of IIT, Vencap, Ltd., Intervent, Inc. and

Intercapital, N.V. until such time as the Order may be modified or the within action shall be finally determined; that the plaintiffs file an undertaking in the amount of $50,000; that Arnold I. Burns be appointed a receiver and that such receiver be directed to take an accounting of past expenditures of Pistell, Vencap, Intervent and Intercapital, and recoup for the benefit of plaintiffs herein any assets of Vencap, Intervent or Intercapital which have previously been wrongfully or improperly dispersed.

October 15, 1974

CURTIS, MALLET-PREVOST, COLT & MOSLE

By _____
A Member of the Firm

Attorneys for Defendants
Charles E. Murphy, Jr., David Taylor and
Havens, Wandless, Stitt & Tighe
Office and P.O. Address
100 Wall Street
New York, New York 10005
Telephone (212) 248-8111

TO: Clerk of the Court

Anderson Russell Kill & Olick, P.C.
Attorneys for Plaintiffs
630 Fifth Avenue
New York, New York 10020

Havens, Wandless, Stitt & Tighe
Attorneys for Defendants
Vencap, Ltd., Intervent, Inc.,
Intercapital, N.V. and Richard
C. Pistell
99 Park Avenue
New York, New York 10016

Herbert B. Jacoby, Esq.
Attorney for Receiver
c/o Schwartz, Burns, Lesser & Jacoby
445 Park Avenue
New York, New York 10022